

1 THE HONORABLE JOHN C. COUGHENOUR
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9 UNITED STATES DISTRICT COURT
10 FOR THE WESTERN DISTRICT OF WASHINGTON
11 AT SEATTLE

12 IN RE: VALVE ANTITRUST LITIGATION

Case No. 2:21-cv-00563-JCC

13 **CONSOLIDATED AMENDED CLASS**
14 **ACTION COMPLAINT**

15 **DEMAND FOR JURY TRIAL**

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1 Plaintiffs Wolfire Games, LLC (“Wolfire”), Dark Catt Studios Holdings, Inc., and Dark
 2 Catt Studios Interactive LLC (collectively with Dark Catt Studios Holdings, Inc., “Dark Catt”)
 3 (collectively with Wolfire, “Plaintiffs”) bring this antitrust action against Defendant Valve
 4 Corporation (“Valve” or “Defendant”) under Section 1 of the Sherman Antitrust Act, 15 U.S.C.
 5 § 1, Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2, Section 4 of the Clayton Act, 15 U.S.C.
 6 § 15, Section 16 of the Clayton Act, 15 U.S.C. § 26, and the Washington Consumer Protection
 7 Act, on behalf of themselves and a class of those similarly situated, and allege as follows:

OVERVIEW OF THE ACTION

9 1. Video games are a vital part of American culture and industry. Many millions of
 10 Americans play video games, creating hundreds of thousands of skilled jobs across the country
 11 with a focus on computer science, artistry, and innovation. Personal computer (“PC”) games, a
 12 subset of video games, alone generate at least \$30 billion worldwide annually. Of that sum,
 13 approximately 75% flows through a single company, Defendant Valve Corporation (“Valve”).

14 2. Valve’s online game store, the “Steam Store,” dominates the distribution of PC
 15 games. Steam provides a software environment where gamers can maintain their library of
 16 games, connect with other gamers for social networking and multiplayer gaming, and access
 17 other ancillary services like the tracking of gaming achievements.

18 3. As a practical matter, publishers must make their games available on Steam to
 19 have any chance of reaching a commercially viable set of customers. Steam is by far the largest
 20 PC game store in the United States (and the world), and it is essential for PC game publishers¹ to
 21 have their games sold on and be compatible with Steam in order to reach the vast majority of
 22 their potential customers. Publishing on Steam is a threshold requirement if a publisher is to
 23 succeed with its PC game, even for large publishers.

24
 25 ¹ In the PC gaming industry, the “developer” is typically the entity that creates the game
 26 while the entity that markets the game is typically referred to as the game “publisher.”
 27 Sometimes a single company undertakes both of these functions. While both terms are used
 throughout this Complaint interchangeably, the proposed class includes publishers as the
 entities that directly pay commissions to Valve.

1 4. Valve uses its dominance over PC game distribution to impose and
 2 anticompetitively maintain a 30% commission on nearly every sale made through its store. This
 3 commission far exceeds what would prevail in a competitive market and yields Valve billions of
 4 dollars in annual profits. Valve's bloated commission makes games more expensive for
 5 consumers to buy, while suppressing sales volumes and revenues for game publishers. And with
 6 Valve extracting so much revenue from its middle-man role, quality and innovation in the
 7 industry suffer.

8 5. Valve has been able to keep its commission fees at supracompetitive levels by
 9 actively suppressing competition to protect its market dominance. Many other game stores have
 10 tried in recent years to compete by charging lower fees to game publishers, in the range of 10%
 11 to 15%, but they have all failed to achieve significant market share because of the
 12 anticompetitive restraints imposed by Valve, as alleged herein.

13 6. The conditions under which Valve initially established its 30% commission
 14 reflected fundamentally different market conditions from today. Specifically, when digital
 15 distribution began to take hold, most game sellers were brick-and-mortar distributors that had
 16 very substantial costs associated with brick-and-mortar distribution, including real estate, labor,
 17 processing, and inventory costs. These brick-and-mortar distributors typically made razor-thin
 18 margins and therefore charged commissions to game publishers (and prices to consumers) that
 19 reflected those built-in substantial costs; typically, around 30%.

20 7. Digital distributors had far lower costs. When Valve first started charging its 30%
 21 commission, it was primarily competing with entities that had to cover extensive costs that
 22 digital distributors of PC desktop games did not (and do not) face.

23 8. Basic economics and real-world experience, however, holds that, in a competitive
 24 market, after this first-mover period, the entry of other rivals with an electronic distribution
 25 model like the Steam Store would have quickly forced Valve's commission levels down to
 26 competitive levels by competing on price (*i.e.*, by charging lower commissions). Indeed, in this
 27 later period, that is exactly what multiple rivals tried to do. But they failed because Valve

1 blocked them from truly competing on price through the anticompetitive conduct detailed herein.
 2 This was so even while the costs of distribution continued to decrease. Thus, the environment in
 3 which Valve initially set its 30% commission does not reflect market realities today nor the cost
 4 structures of digital distribution, and has never been free of Valve's substantial market power.
 5 And, because of the restraints detailed herein, Valve has been able to perpetuate the 30%
 6 commission rate that arose to cover substantial brick-and-mortar distribution costs that are long
 7 since a thing of the past.

8 9. Valve has for years maintained its dominance and thwarted effective competition
 9 by engaging in various anticompetitive acts. For example, Valve forces game publishers to agree
 10 to a Platform Most-Favored-Nations Clause (the "Valve PMFN") as a requirement to access
 11 Steam. Valve explicitly requires that publishers agree that games sold elsewhere must be sold
 12 "in a similar way to how you sell your game on Steam" and publishers cannot "give Steam
 13 customers a worse deal" for games sold elsewhere,² i.e., Valve *prohibits* publishers from giving
 14 consumers *a better deal* on *other* stores that compete with Steam. Valve interprets and enforces
 15 this language to encompass price parity, forcing game publishers to charge the inflated Steam
 16 Store price across the marketplace, on *all* game sales, even sales of games that are not enabled
 17 for Steam. Valve thus uses its PMFN to control the prices of games sold in the Steam Store and
 18 in *other stores*. Rather than lowering prices to Steam customers, Valve's PMFN has the effect of
 19 reducing price competition and raising game prices.

20 10. To illustrate how the PMFN works, consider a game publisher who develops a
 21 game called "GAME ONE." Given Valve's dominance, that publisher will almost certainly need
 22 to market a version of the game that is enabled for Steam in order for the game to be
 23 commercially viable. Thus the publisher must set its price high enough to account for Valve's
 24 30% commission.

25
 26
 27 ² *Steamworks Documentation, Steam Keys*,
 https://partner.steamgames.com/doc/features/keys (last visited Dec. 20, 2021).

1 11. Valve might allow the publisher to sell a small volume of Steam-enabled games
 2 outside of the Steam Store, through Steam keys as discussed below, but Valve requires that they
 3 be sold at prices higher or equal to the Steam Store price.

4 12. But critically, Valve's rules do not govern only Steam-enabled versions of games
 5 (those purchased through the Steam Store or Steam keys)—those rules also govern versions of
 6 games that would never be played on the Steam platform, period. Specifically, suppose the game
 7 publisher also develops a version of GAME ONE that is not enabled for Steam and will not be
 8 sold in the Steam Store—like a version to be played on the Epic Games Platform. Valve
 9 interprets and enforces its PMFN to mandate that the publisher cannot sell *that version* in other
 10 stores for a cheaper price, even when the competing store has a much lower commission. Valve
 11 thus prevents the game publisher from selling at a lower price on the alternative store, even when
 12 the version to be sold has no connection to the Steam platform, and thus effectively blocks all
 13 price competition.

14 13. Valve's PMFN harms the entire industry by removing the ability of competitive
 15 forces to drive lower commissions and lower prices. Absent Valve's PMFN, competitive forces
 16 would put downward pressure on Valve's bloated 30% commission due to game publishers
 17 selling games for less on stores that charge lower commissions. Those competitive pressures
 18 would force Valve to lower its commission in an effort to compete on price with its rivals. That
 19 would promote competition and lead to overall lower prices, benefiting game publishers and
 20 consumers alike. But Valve's anticompetitive PMFN blocks these benefits from occurring.

21 14. Similarly, publishers cannot discipline Valve's excessive commissions by steering
 22 gamers to lower-commission storefronts with lower retail prices. Thus, publishers reluctantly
 23 market their games primarily through the dominant Steam Store where, year after year, Valve
 24 continues to take its 30% fee on nearly every sale. No wonder that a former Valve employee
 25
 26
 27
 28

1 described the Steam Store as a “virtual printing press” that imposes a “30% tax on an entire
 2 industry.”³

3 15. In addition to the price-parity requirements of the Valve PMFN, Valve limits the
 4 sales of Steam-enabled games that publishers can make through other storefronts. “Steam keys”
 5 are alphanumeric codes that a publisher can request from Valve and which provide access to a
 6 licensed copy of a game on Steam. Publishers can sell Steam keys on other stores, use them to
 7 beta test games before launch, or provide them to media interested in reviewing a game.

8 16. A customer can purchase a Steam key through another retail venue, rather than
 9 the Steam Store, but still associate the game with her Steam account and play the game on the
 10 Steam platform—even though the game was not purchased from Valve itself.

11 17. Valve uses its control over Steam keys to coerce publishers into following its
 12 anticompetitive restrictions; it will restrict or cut off access to Steam keys for violations of its
 13 rules. Additionally, Valve limits the number of Steam keys it allows publishers to obtain and sell
 14 to ensure that Steam always has the highest volume of sales for a given game. If Valve learns
 15 that a publisher is selling a substantial number of Steam-enabled games through competing
 16 stores using Steam keys, Valve will threaten that publisher with punishment, which can include
 17 removing their game from Steam entirely.

18 18. Steam keys help Valve to lock publishers into the Steam Store, enforce Valve’s
 19 anticompetitive PMFN, ensure sales for any given game remain higher on Steam than third-party
 20 stores, lock gamers into Steam rather than using other services, collect game pricing and sales
 21 information on other stores, and punish publishers who take any action perceived as against
 22 Valve’s interests.

23 19. Valve also uses its control of the publicity and visibility of games on the Steam
 24 store to keep publishers in check, including through Valve’s Steam store user review system.

25
 26 3 Andrew McMahon, *Former Valve Employee Says Steam Was Killing PC Gaming, Epic*
 27 *Games Is Saving It*, TWINFINITE (Apr. 8, 2019), <https://twinfinite.net/2019/04/former-valve-employee-says-steam-was-killing-pc-gaming-epic-games-is-saving-it/>.

1 Valve's selective policing of its prohibition on user "review bombing" is a further tool Valve
 2 uses to coerce publishers. Malicious negative reviews can result in a game, or publisher, being
 3 banned from Steam, and yet Steam declines to enforce its policies against review bombing when
 4 a publisher is deemed to have acted against Valve in some way, such as by running a promotion
 5 on another storefront.

6 20. While unrelated to the game, the volume of negative reviews can have devastating
 7 results for future sales and can bury the game among thousands of others in search results and
 8 recommendations. The reviews can result in less visibility and lower sales for publishers and
 9 publishers unjustifiably being banned from Steam altogether.

10 21. Valve's anticompetitive scheme has been wildly successful. It has maintained
 11 Valve's dominance and its ability to extract supracompetitive profits, with no end in sight.
 12 Innovation is the engine of the video game industry, but Valve's imposition of its
 13 supracompetitive tax suppresses innovation and output across the industry while elevating the
 14 prices of PC games. Forced to pay Valve's exorbitant tax, game publishers have fewer resources
 15 to invest in creating new games and must charge higher prices than they would in a competitive
 16 market.

17 22. Valve annually makes billions of dollars from commissions on Steam sales.
 18 These are astonishing figures for Valve's limited middleman role, and these sustained inflated
 19 profits reflect that competition is not working as it should. Meanwhile, Valve devotes only a
 20 small percentage of its revenue to maintaining and improving the Steam Store, and dedicates
 21 very few employees to that effort.

22 23. Without Valve's anticompetitive restraints on publishers, competing storefronts
 23 would be able to gain traction in the industry by attracting customers through lower pricing
 24 and/or exclusive offerings, and compete for publishers by offering better distribution terms.
 25 Increased competition in PC game distribution would result in greater exposure for publishers'
 26 games, more money to publishers, more choices for publishers and consumers, more innovation,
 27 and/or potentially lower prices for consumers, among other benefits.

1 24. Ultimately, the only way for game publishers to avoid Valve’s anticompetitive
 2 scheme is to avoid Steam altogether. But time and time again, when publishers or other market
 3 participants have tried to avoid Steam, they have failed to obtain sufficient scale to challenge
 4 Valve because of Valve’s dominance and anticompetitive restraints. These failed efforts include
 5 some by the most sophisticated and largest gaming and technology companies in the world, such
 6 as Amazon, Electronic Arts (“EA”), Epic, and Microsoft. The failure of these deep-pocketed
 7 companies to challenge Valve in this space demonstrates Valve’s market power.

8 25. At bottom, Valve’s scheme imposes a bloated tax on the PC gaming industry,
 9 exploiting publishers reliant on Steam, foreclosing would-be competitors, and harming PC
 10 gaming consumers. Valve forces game publishers to use the Steam Store and give Valve 30% of
 11 nearly every sale if they want to gain access to Steam—access they need to sell their games. To
 12 afford Valve’s 30% commission, game publishers must charge higher prices to consumers and
 13 have fewer resources for innovation and creation. Game quality and choice suffers as a result,
 14 and gamers are injured by paying higher retail prices for fewer and lower-quality games.
 15 Competition, output, and innovation are suppressed, in ways that can never be fully redressed by
 16 damages alone. Thus, in addition to damages, injunctive relief removing Valve’s
 17 anticompetitive provisions is necessary to bring competition to the market and benefit the public.

18 26. Plaintiffs bring this action on behalf of themselves and a putative class of those
 19 similarly situated in the public interest and to redress Valve’s abuse of its market power to
 20 restrain trade, as well as to attempt to monopolize and maintain its monopoly in the PC game
 21 distribution market. Valve restrains trade, attempts to monopolize, and maintains its monopoly
 22 through the anticompetitive practices described herein in violation of Sections 1 and 2 of the
 23 Sherman Act (15 U.S.C. §§ 1, 2) and the Washington Consumer Protection Act (RCW 19.86).

PARTIES

25 27. Plaintiff Wolfire Games, LLC (“Wolfire Games”) is a video game publisher
 26 headquartered in San Francisco, California. Wolfire Games has entered into Steam Distribution
 27 Agreements (“SDAs”) with Valve to make Wolfire Games’ PC games compatible with Steam,

and to sell its PC games through the Steam Store. As a result of Defendant's anticompetitive practices, Wolfire Games has paid supracompetitive commissions to Valve for each sale of its PC games through the Steam Store and been subject to reduced output and quality in the distribution of its games through the Steam Store.

28. Plaintiff Dark Catt Studios Holdings, Inc. (“DCS Holdings”) is a multimedia production company and development studio with a focus on film, animation, and narrative media forms. It is incorporated in the State of Delaware with its principal place of business in Illinois.

29. Plaintiff Dark Catt Studios Interactive LLC (“DCS Interactive”) is a wholly owned subsidiary of DCS Holdings and specializes in PC software, gaming, interactive content, and experiences. It is formed under the laws of the State of Illinois and has its principal place of business in Illinois.

30. DCS Holdings contracted with Valve under the SDA during the Class Period.⁴ DCS Interactive created a PC game and made it compatible with Steam by incorporating the Steamworks software development kit (“SDK”), subjecting it to the Steamworks Documentation rules. Dark Catt therefore contracted with Valve under the SDA and the rules governing use of Steamworks. DCS Interactive, bound by the terms of its parent DCS Holdings’ contracts with Valve and the Steamworks Documentation, published its game for sale on Steam, sold its game to consumers on Steam, and paid various sums to Valve, including Valve’s mandatory 30% revenue share on game sales on Steam.

31. Defendant Valve Corporation is a game developer, publisher, hardware manufacturer, and digital distributor. It is the world's largest PC game distributor. Valve Corporation is incorporated in the State of Washington and has its principal place of business at 10900 NE 4th Street, Suite 500, Bellevue, Washington 98004. It operates the Steam store,

⁴ The Class Period is defined below under Class Action Allegations as “on or after April 27, 2017, and continuing through the present.”

1 distributes PC games online, and, among other conduct, contracts with PC video game publishers
 2 through the SDA and Steamworks Documentation.

JURISDICTION AND VENUE

4 32. Plaintiffs bring this action under Sections 4 and 16 of the Clayton Act, 15 U.S.C.
 5 §§ 15 and 26, to recover treble damages and costs of suit, including reasonable attorneys' fees,
 6 against Valve for the injuries to Plaintiffs and the Class, alleged herein, arising from Valve's
 7 violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2. Plaintiffs also assert
 8 claims under Washington's Consumer Protection Act, RCW 19.86, seeking treble damages and
 9 injunctive relief under RCW 19.86.090.

10 33. The Court has subject matter jurisdiction over this action pursuant to Sections 4
 11 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26, as well as pursuant to 28 U.S.C. §§ 1331
 12 and 1337(a). The Court has supplemental jurisdiction for the Washington state law claim under
 13 28 U.S.C. § 1337.

14 34. This Court has personal jurisdiction over Valve because Valve's headquarters are
 15 located in Bellevue, Washington. Valve has engaged in sufficient minimum contacts with the
 16 United States and has purposefully availed itself of the benefits and protections of both United
 17 States and Washington law such that the exercise of jurisdiction over Valve would comport with
 18 due process. Valve has (a) transacted business throughout the United States, including in the
 19 Western District of Washington; (b) contracted with publishers within the United States,
 20 including in the Western District of Washington; (c) had substantial contacts within the United
 21 States, including in the Western District of Washington; and/or (d) was engaged in an illegal
 22 anticompetitive scheme that was directed at and had the intended effect of causing injury to
 23 persons residing in, located in, or doing business throughout the United States, including in the
 24 Western District of Washington.

25 35. Valve also is subject to personal jurisdiction because, either directly or through its
 26 agents or affiliates, Valve transacted business throughout the United States, including in this
 27 District, that was directly related to the claims at issue in this action.

36. Venue is proper in this District pursuant to 15 U.S.C. §§ 15(a) and 22 because Valve is found in and transacts business in this District.

37. Venue also is proper pursuant to 28 U.S.C. § 1391(b), (c), and (d) because, during the relevant period, Valve resided, transacted business, was found, or had agents in this District; a substantial part of the events or omissions giving rise to these claims occurred in this District; and a substantial portion of the affected interstate trade and commerce discussed herein was carried out in this District, as provided in 15 U.S.C. § 22 and 28 U.S.C. § 1391(b), (c), and (d). Further, Valve selected courts located in King County, Washington, as the venue for disputes arising under, in connection with, or incident to the SDA.

FACTUAL ALLEGATIONS

I. BACKGROUND

38. A video game is an electronic game that can be played on a computing device, such as a PC, gaming console, smartphone, or tablet. As of 2021, there are roughly 3 billion video game players worldwide.

39. Video games are subcategorized by the type of device on which gamers play them, including computer games (*e.g.*, PC games), console games (*e.g.*, PlayStation or Xbox games), and mobile games (*e.g.*, games played primarily on smartphones or tablets). Any game developed for a particular type of device will only work for that type of device (*e.g.*, a PC game will work only on a PC), and, as detailed below, different versions of PC games are often also created for specific PC game clients, or platforms, like Steam.

40. PC games are video games that are downloaded and installed onto a PC device. Although such games vary in size, scope, type, and features, they all involve the ability to load the game directly from the user's computer and then allow the user to play the game from that computer. All require installation on the user's PC to work, and all save data on the user's PC, both for the purposes of running the game, as well as for saving game progress or preferences (such as control schemes, sound and video preferences, etc.).

1 41. PC games are almost as old as PCs themselves. PCs first came to prominence in
 2 the 1980s and, at that time, numerous game publishers released games for this new type of
 3 computing device. As PCs' popularity grew, so, too, did the popularity of PC games. In 2020,
 4 the revenue from the worldwide PC games was at least \$30 billion.

5 42. For most of the history of the PC game industry, due to technology limitations,
 6 gamers purchased most PC games at brick-and-mortar locations. When users purchased such
 7 games, they received physical media, such as a CD-ROM, that could be brought home and
 8 installed on their computers.

9 43. Brick and mortar retailers have substantial costs that are not incurred by digital
 10 retailers: real estate; shipping; inventory management; personnel; and other costs inherent to
 11 operating many physical retail stores. Brick and mortar retailers also have very thin profit
 12 margins. For example, Walmart's "net margin"—which is the ratio of net profit divided by
 13 revenue—is a mere 1.4% over the last 10 years.⁵ That means for every \$100 in product that
 14 Walmart sells, only \$1.40 of that is retained as profit for the company, with the rest going to
 15 employees, real estate, and the like. Brick-and-mortar retailers have thus historically charged
 16 higher commissions for video game publishers who make their games available at the retailer;
 17 typically, around 30%. But a brick-and-mortar retailer like Walmart does not get to keep
 18 anywhere near the full (or even a substantial amount) of its 30% commission as profit—it needs
 19 to pay for employees, utilities, real estate, inventory, and other costs.

20 44. In contrast, digital distributors of PC games have substantially lower costs;
 21 several orders of magnitude cheaper. That discrepancy, coupled with the convenience of buying
 22 and then downloading even huge PC games at home due to increased internet speeds, opened the
 23 possibility for disruption by digital distributors. Digital distributors could avoid the vast majority
 24 of costs that brick-and-mortar retailers must incur as a fundamental aspect of their business

25
 26 ⁵ Table displaying *Competitive Comparison Data*, GURUFOCUS.COM,
 27 https://www.gurufocus.com/term/netmargin/WMT/Net-Margin-Percentage/Walmart%20Inc
 (last visited Dec. 20, 2021).

1 model, thus making substantially more profits on PC game sales than brick-and-mortar stores at
 2 commissions lower than 30%. In a competitive market absent the restraints imposed by Valve,
 3 these factors should have delivered far lower commissions and prices.

4 45. Today, the substantial majority of PC game sales are digital, and made through
 5 digital distributors of which the Valve Steam Store is the undisputed dominant player.

6 **A. Valve Builds its Dominant Position in PC Game Distribution**

7 46. Valve was founded in 1996 by former Microsoft employees as a company that
 8 developed video games. In 1998, Valve released its first PC game, the critically acclaimed Half-
 9 Life. Valve subsequently developed and published other successful franchises, such as Portal
 10 and Counter-Strike.

11 47. Prior to the introduction of Steam, Valve games that featured online multiplayer
 12 capabilities, such as Half-Life and Counter-Strike, used the third-party World Opponent Network
 13 (“WON”). WON was created by Sierra, the original publisher of Half-Life and other PC games.
 14 In 2001, Valve acquired WON and its 1.5 million user base. Valve continued to operate WON
 15 for Half-Life, Counter-Strike, and other Sierra-published PC games as it began to develop the
 16 Steam platform.

17 48. A significant shift in Valve’s business occurred after its creation of Steam in
 18 2003.⁶ Steam originally centered on providing a patch and update process for Valve-developed
 19 games. Patches fix flaws, or “bugs,” in a game’s software after initial release, while updates
 20 often incorporate new functionality or content into the game. Prior to introducing Steam, Valve
 21 had difficulty with providing patches and updates for its games, which created problems for
 22 Valve because its games often involved an online multiplayer component that required the
 23 various copies of games that users owned to interact with each other. Because users often
 24 obtained different versions of the games (*e.g.*, v1, v1.1, v1.2, etc.), they could have compatibility

25
 26 6 *About Us*, Valve Corporation, <https://www.valvesoftware.com/en/about> (last accessed
 27 Dec. 17, 2021) (“We created Steam in 2003 to serve as a digital content distribution channel,
 before app stores existed.”).

1 problems which would prevent them from playing together. Steam provided a central location
 2 for Valve customers to receive those software updates and keep their games up to date.

3 49. Steam shifted from a patching and version control platform to including a store
 4 component when Valve released Half-Life 2 in November 2004. For the first time, in addition to
 5 the ability to purchase a physical copy of the game, consumers could also buy Half-Life 2
 6 through the new Steam storefront. But regardless of where the game was purchased, Valve
 7 required the Steam platform to be installed on the user's PC to play Half-Life 2—customers
 8 could not play the game unless they created a Steam account and installed Steam on their PC.
 9 Users that purchased the game using traditional distribution channels were provided with codes
 10 they could submit to Steam to add Half-Life 2 to their libraries.

11 50. Through this “[f]orced adoption” to play Half-Life 2, Valve started to build its
 12 “stranglehold on the PC gaming market.”⁷ Consumers had no choice but to use Valve’s new
 13 platform to play the blockbuster hit Half-Life 2 and continue to play other popular Valve games
 14 online. Valve was able to strong-arm consumers into using Steam not on the merits of its
 15 platform, but as a necessary condition to play Valve’s then-marquee games.

16 51. In 2004, Valve also shut down WON and forced all WON users to download and
 17 install Steam for multiplayer functionality, even gamers who had purchased Half-Life and
 18 Counter-Strike years before the introduction of Steam. Through these practices, Valve did what
 19 smaller publishers (Stardock) or non-publishers (GameStop and Direct2Drive) could not do—use
 20 a blockbuster hit and its control of a popular multiplayer service to force its gaming platform
 21 onto the market.

22 52. Valve soon began contracting with third parties to digitally distribute their games
 23 on Steam in exchange for a cut of the revenues, expanding its reach and requiring customers of
 24

25 7 J. Conditt, ‘*Half-Life: Alyx*’ is proof Valve answers to no one, ENGADGET (Mar. 18,
 26 2020), <https://www.engadget.com/2020-03-18-half-life-alyx-valve-steam-stockholders-boo.html> (“Valve forces players to use specific platforms, shuts down revenue streams for
 27 developers, and shows little interest in building the games and sequels that fans are desperate to
 play. The company consistently offloads its moderation duties . . .”).

1 non-Valve games to install the Steam platform. There are now at least 50,000 games available
 2 on Steam, and the vast majority are third-party games.⁸

3 53. Although selling third-party games, unlike other distributors that sell multiple
 4 versions of games designed for different platforms, Valve does not sell games enabled for other
 5 gaming platforms in the Steam Store. For example, when EA attempted to launch its own PC
 6 gaming platform Origin, Valve refused to sell Origin-enabled versions of games through the
 7 Steam Store. At the time, EA explained: “At present, there is only one download service
 8 [Steam] that will not allow this relationship. . . [The Steam Store] has imposed a set of business
 9 terms for developers hoping to sell content on that service—many of which are not imposed by
 10 other online game services.”⁹

11 54. Valve’s success as a company has largely tracked the growth of Steam. In 2005,
 12 *Forbes* estimated that Valve had grossed \$70 million. As of 2012, the company was worth over
 13 \$3 billion, and Steam had doubled its sales for each of the prior seven years.¹⁰ *Forbes* noted in
 14 2012 that more than half of Valve’s revenue came from selling games over Steam and “lack of
 15 competition allowed it to seize as much as 70% of the market.”¹¹ In 2011, Valve Chief
 16 Executive Officer Gabe Newell called Valve “tremendously profitable” and asserted that, with
 17 only 250 employees, it was more profitable per employee than Google or Apple.¹² At that time,

20 _____
 21 ⁸ Dustin Bailey, *Steam Just Reached 50,000 Games Listed*, PCGAMESN (Feb. 12, 2021),
<https://www.pcgamesn.com/steam/total-games>.

22 ⁹ Wesley Yin-Poole, *Why you can’t buy Crysis 2 from Steam*, EURO-GAMER (July 7,
 23 2011), <https://www.eurogamer.net/articles/2011-07-07-why-you-cant-buy-crysis-2-from-steam>.

24 ¹⁰ David Ewalt, *Valve’s Gabe Newell Is the Newest Video Game Billionaire*, FORBES (Mar.
 25 7, 2012), <https://www.forbes.com/sites/davidewalt/2012/03/07/valve-gabe-newell-billionaire/?sh=736ce53d6d19>.

26 ¹¹ *Id.*

27 ¹² Oliver Chiang, *The Master of Online Mayhem*, FORBES (Feb. 28, 2011),
<http://www.forbes.com/forbes/2011/0228/technology-gabe-newell-videogames-valve-online-mayhem.html>.

1 its estimated value was \$2 billion to \$4 billion, and its market share was “half to 70%” of the
 2 market.¹³

3 55. By 2019, Valve’s market capitalization had ballooned to \$10 billion. In 2017,
 4 Steam generated over \$4.3 billion worth of sales, not including in-game purchases and
 5 downloadable content (“DLC”), which are also significant sources of revenue.¹⁴ It is estimated
 6 to continue to make billions of dollars in revenue for Valve each year.¹⁵ Steam remains Valve’s
 7 largest source of revenue because Valve collects a percentage of every sales transaction amount
 8 for sales of third-party games, DLC, in-game purchases, and other transactions.

9 56. Valve, through Steam, is the world’s largest distributor of PC games, holding
 10 approximately 75% of the global market.¹⁶ In 2020, Steam recorded 120 million monthly active
 11 players, 25 million peak concurrent users, and 2.6 million new purchases per month.¹⁷ It has
 12 over one billion user accounts.¹⁸

13 57. Epic Games Store, Steam’s largest competitor, sold approximately \$265 million
 14 worth of third-party games in 2020, compared to the billions of dollars’ worth of third-party
 15 games sold by Steam.¹⁹

16
 17
 18
 19 ¹³ *Id.*

20 ¹⁴ Joel Hruska, *Steam Earned an Estimated \$4.3B in 2017, but Benefits Flow to Handful of*
 21 *Titles*, EXTREMETECH (Mar. 26, 2018), <https://www.extremetech.com/gaming/266323-steam-earned-estimated-4-3b-2017-benefits-flow-handful-titles>; Arthur Zuckerman, *75 Steam*
 22 *Statistics: 2020/2021 Facts, Market Share & Data Analysis*, COMPARE CAMP (May 15, 2020),
<https://comparecamp.com/steam-statistics>.

23 ¹⁵ Conditt, ‘*Half-Life: Alyx*’ is proof Valve answers to no one, *supra* note 7.

24 ¹⁶ Zuckerman, *75 Steam Statistics*, *supra* note 14; Hruska, *Steam Earned an Estimated*
\$4.3B in 2017, *supra* note 14 (“With 80 percent+ of the game distribution market, Steam has a
 lock on gaming that no other media outlet has ever enjoyed.”).

25 ¹⁷ Valve Corporation, *Steam – 2020 Year in Review* (Jan. 13, 2021),
<https://store.steampowered.com/news/group/4145017/view/2961646623386540826>.

26 ¹⁸ *Id.*

27 ¹⁹ Epic Games, Inc., *Epic Games Store 2020 Year in Review* (Jan. 28, 2021),
<https://www.epicgames.com/store/en-US/news/epic-games-store-2020-year-in-review>.

1 58. Valve has developed and published only one PC game since 2017, relying instead
 2 on the billions of dollars in revenue Steam generates.²⁰ Yet its investment in Steam has also
 3 been limited, as Valve's anticompetitive conduct allows Steam to remain dominant without
 4 reference to its quality.

5 59. In addition, Steam gives Valve direct access to private business information of
 6 almost every competing development studio, including who bought their games, when customers
 7 played them, who they played them with, what they said to each other while playing, which
 8 regions the players live in, when the publishers accessed their financial information, and much
 9 more. Through the Steam keys program, discussed further below, Valve also has accumulated
 10 detailed internal information about the operations of competing storefronts. Valve shares
 11 virtually none of this data with publishers who sell their games on the Steam Store, even in
 12 aggregated and anonymized form.

13 60. Valve has already reaped a substantial reward for its early development of a
 14 digital distribution system that can support third-party applications. As detailed below, it is now
 15 using a variety of tactics to enhance and maintain its market power, ensuring that publishers and
 16 customers remain dependent on it and foreclosing would-be competitors from the PC game
 17 distribution market.

18 **B. Publishers Must Have Access to Steam and Steam Keys to Meaningfully
 19 Participate in the Market**

20 61. Due to Steam's market dominance and exclusion of potential rivals, publishers
 21 must have their game on Steam to have sufficient access to the market and an opportunity to
 22 generate revenue. Publishers also need to have their game on Steam to have access to Steam
 23 keys.

24
 25
 26 ²⁰ Valve also released a free-to-play virtual card game in 2018, which is no longer
 27 supported and widely considered a failure, and a free-to-play offshoot of its Dota 2 game in
 2020, which is based on a community-created game mode for Dota 2 that an independent
 publisher released commercially in 2019.

1 62. A Steam key is simply a product authorization code Valve generates that provides
 2 access to a game hosted on Steam. Steam keys are alphanumeric codes that provide a way to
 3 authenticate users and grant a Steam license to valid purchasers.

4 63. Publishers can use Steam keys to sell copies of a Steam-compatible game through
 5 another store, provide promotional access to media and industry insiders, run small beta tests of
 6 games still in development, or provide access to developers working on the game.

7 64. When selling Steam keys, publishers must comply with Valve's PMFN, giving
 8 Valve control over pricing throughout the industry.

9 65. A publisher must request Steam keys from Valve, and Valve has sole discretion to
 10 approve the requests. A granted Steam key Request results in a text file filled with 15-character
 11 text strings, each of which is a Steam key. The publisher can then send this file to a store to sell
 12 those Steam keys to customers. Customers then enable their purchased games on Steam.

13 66. Other stores, both digital and physical, sell access to games through Steam keys.
 14 Sales of Steam-enabled games exceed those of games enabled for other platforms. Consistent
 15 with the shift to digital, brick-and-mortar retailers sell product boxes that contain digital
 16 download codes rather than a disk. There is little physical distribution of PC games anymore, so
 17 publishers must be able to sell games online to reach consumers. Likewise, many digital stores
 18 are also selling Steam keys rather than a version of the game built for a different game client.

19 67. Competitors that attempt to compete with Steam in the PC game distribution
 20 market, including Amazon, GameStop, Walmart, Target, Green Man Gaming, Humble Bundle,
 21 and GOG, are typically selling Steam keys. Even though such sales are for PC games enabled
 22 for Steam, they are a small share of the market.

23 68. Thus, these alternative stores do not provide publishers a PC game distribution
 24 channel independent of Steam and outside of Valve's control, nor do they provide a significant
 25 competitive constraint on Valve. Moreover, they pale in comparison to Steam. In 2018, Green
 26 Man Gaming disclosed annual revenue of £47.5 million (about \$60 million) for 2017, with 4.7
 27 million registered users and 1 million active customers. It estimated it had less than 1% of the

1 market.²¹ Humble Bundle's annual revenues are likewise a tiny share of the market, estimated at
 2 \$10 to \$50 million.²²

3 69. Valve also ensures that Steam keys are distributed using a low-quality and
 4 insecure method, including for Wolfire's and Dark Catt's games, which prevents meaningful
 5 competition even on non-price dimensions.

6 70. As mentioned, Steam keys are in practice distributed using text files with 15-
 7 character codes. At any stage of distribution, a bad actor with access to the simple Steam key
 8 text file can copy or remove some or all of the Steam keys and resell them without compensating
 9 the publisher. The bad actor can even sell the same Steam key multiple times, and the Steam key
 10 will only work for the first player who adds it to their personal Steam account—defrauding the
 11 consumer. The publisher also faces the risk that when it sells a Steam key, it is selling to a
 12 reseller outside of the publisher's control that can defraud consumers and injure the publisher's
 13 reputation because the game won't run on Steam. Relatedly, a Steam key purchaser faces the
 14 risk that she is not buying a valid *bona fide* key, but is instead buying a fraudulent key that will
 15 not add the game to her Steam library.

16 71. Some third-party stores like Green Man Gaming and Humble Bundle are
 17 authorized retailers of Steam keys and take steps to prevent this type of fraud. But the security
 18 flaws in the Steam key system have also created a "grey" market where Steam key resellers or
 19 fraudsters sell Steam-enabled games without permission of the publisher. For example, the keys
 20 may be sold by an individual who (a) purchased Steam keys illegally with stolen credit card
 21 information; (b) purchased in bulk during a Steam sale to then resell at profit once the sale
 22
 23

24 ²¹ Christopher Dring, *Green Man Gaming's £100m IPO: "We've grown between 25 to*
 25 *30% every year,"* GAMEINDUSTRY.BIZ (Sept. 4, 2018),
<https://www.gamesindustry.biz/articles/2018-09-04-green-man-gamings-100m-ipo-weve-grown-between-25-to-30-percent-every-year>.

26 ²² Dun & Bradstreet, *Humble Bundle, Inc.*, https://www.dnb.com/business-directory/company-profiles.humble_bundle_inc.f1c7df9bcc19197f91c497215ca8adaa.html (last accessed Dec. 17, 2021).

1 concluded (a violation of Steam's terms of service); or (c) posed as a member of the press to
 2 obtain a free promotional demonstration key.

3 72. As the price of second-hand Steam keys is generally lower, the value of first-hand
 4 sales from the publisher lessens as well.

5 73. There is no reason or justification for maintaining this insecure and fraud-prone
 6 system for delivering Steam keys. This is made clear by third-party store Humble Bundle's
 7 attempt to bring about reforms and transparency in the distribution of Steam keys.

8 74. Humble Bundle originally offered game "bundles" for which customers would
 9 pay whatever price they wanted in order to purchase multiple games at once. Users could choose
 10 how much of their payment they wanted to direct to each publisher, or to a charity of their
 11 choice. This option proved very popular with both customers and publishers. After the initial
 12 "Humble Indie Bundle" event in 2010, Humble Bundle began organizing similar events of
 13 increasing scale and frequency. Humble Bundle sold hundreds of thousands of bundles in
 14 subsequent events, transferring millions of dollars to publishers and charities. In total, Humble
 15 Bundle charitable donations have added up to over \$197 million.

16 75. Due to the prevalence of Steam, customers requested that Humble Bundle include
 17 Steam keys in their events for convenience, and Humble Bundle complied. But the security
 18 flaws in Steam keys caused problems. Customers often associated only some of the Steam keys
 19 in the bundle to their personal Steam accounts, and had Steam keys for other games left over.
 20 Because they are just strings of text, customers could easily resell keys that they did not want,
 21 which were pushed to the grey market. This made publishers reluctant to participate in Humble
 22 Bundle events, because the publishers lost control over the price and distribution of their Steam
 23 keys, which undercut the value of their products.

24 76. Humble Bundle solved this problem by working with Valve to create a direct
 25 integration between the Humble Bundle store and Steam. Humble Bundle customers would
 26 purchase a bundle, and then choose whether to download the games directly, or to link the games
 27
 28

1 to a specific Steam account. If the customer chose the latter, the integration would automatically
 2 add all of the games to the customer's Steam account for use in Steam.

3 77. Sales of these games were guaranteed to be legitimate because Valve added the
 4 games directly to the gamer's Steam account. Because Steam keys were never directly exposed,
 5 this system was more secure. Humble Bundle's sales increased, in large part because publishers
 6 no longer feared their Steam keys would end up in the grey market.

7 78. But after Humble Bundle's distribution of Steam-enabled games began to scale,
 8 Valve abruptly removed the secure integration between Humble Bundle and Steam. As a result,
 9 Humble Bundle had to resume selling Steam keys that are not secure. After Valve terminated
 10 the direct integration, Humble Bundle's sales growth declined.

11 79. There is no legitimate technical or other justification for Valve cutting off the
 12 direct integration that it had previously made available to Humble Bundle. Valve's termination
 13 of Humble Bundle's keyless integration with Steam can be explained only by anticompetitive
 14 motive—Valve terminated this integration because Steam faced increased competition. Valve's
 15 reversal caused significant harm to publishers and consumers.

16 80. Similarly, Valve's rivals Ubisoft and Epic Games offer "keyless" distribution
 17 programs, obviating the security problem inherent in Steam keys. Epic Games Store ("EGS")
 18 began offering keyless integration with other game stores so that an EGS-enabled game
 19 purchased on a third-party game store is instantly loaded into a gamer's EGS library, thereby
 20 allowing publishers to avoid the risks inherent to key-based distribution models.²³

21 81. Valve's actions to entrench Steam keys as the industry standard and impose its
 22 PMFN throughout the industry harms publishers in additional ways. Publishers also rely on
 23

24 ²³ *Development Update: Self-Refund, Keyless Partner Integration and Changes to*
 25 *Ownership Authorization*, EPIC GAMES (May 18, 2020), <https://www.epicgames.com/store/en-US/news/development-update-self-refund-keyless-partner-integration-and-changes-to-ownership-authorization> ("Players will no longer need to take additional steps to redeem a key which often includes exchanging 20-digit redemption codes. Instead, this provides more confidence knowing a purchase is coming from a legitimate source and that it is directly attributed to your linked Epic Games account.").

1 Steam keys to promote their games, including to provide free access to media or to market a
 2 game to a larger publisher that might be interested in investing in the game. PC game investors,
 3 distributors, and publishers require Steam keys, as the industry standard, to evaluate a game for
 4 possible funding, marketing support, or distribution, and industry media require publishers to
 5 provide Steam keys to trial games. These entities will accept only Steam keys, rather than, for
 6 example, an .exe file, to protect themselves from alleged violations of nondisclosure agreements
 7 or intellectual property protections.

8 82. Steam keys allow Valve to entrench itself as the industry standard game client and
 9 authorization system and keep publishers dependent on Valve for any meaningful access to the
 10 PC game distribution market.

11 **C. Valve Propagates Its Anticompetitive Rules and Pricing Through Its
 12 Contracts with Publishers**

13 83. Valve requires that publishers wishing to market Steam-enabled games sign up as
 14 a Steamworks Partner with Valve. Valve also requires the game publisher to list its games for
 15 sale on the Steam Store.

16 84. To become Steamworks Partners, publishers contract with Valve via the Software
 17 Development Agreement (“SDA”). Valve also includes extensive rules throughout the
 18 Steamworks Documentation that governs the use of the Valve software necessary to make a
 19 game compatible with Steam.

20 85. Steamworks is “a set of tools that enable you to distribute your product to Steam
 21 customers and a set of features you can use in your product.”²⁴ To publish a game on Steam, a
 22 publisher must create a Steamworks developer account. As part of the account creation process,
 23 the publisher must agree to the form SDA. The publisher must also pay a \$100 Steam Direct fee
 24 for each product the publisher wishes to distribute on Steam.

25
 26
 27 ²⁴ *Steamworks Documentation, Getting Started*,
 https://partner.steamgames.com/doc/gettingstarted (last accessed Dec. 17, 2021).

1 86. The publisher can then download the Steamworks Software Development Kit
 2 (“SDK”), which contains “all the scripts and templates for building and uploading your product
 3 to Steam.”²⁵ Publishers must make their Steam-enabled games available for sale on the Steam
 4 Store. The Steamworks SDK tools ensure a game is compatible with Steam, and use of the SDK
 5 is required to make a game available for sale on Steam. One component, called SteamPipe, is
 6 required to upload content to Steam, making use of Steamworks mandatory for a publisher to
 7 publish and sell its game on Steam.²⁶ All publishers therefore must become Steamworks
 8 Partners to publish their games on Steam and must abide by the Steamworks Documentation, in
 9 addition to the terms of the SDA.

10 87. Valve includes extensive rules throughout the Steamworks Documentation that
 11 are binding on publishers (collectively, the “Steamworks Rules”). The SDA also requires
 12 publishers to make their games compatible with any Steamworks features used, including
 13 complying with the Steamworks Rules, and otherwise references and incorporates the
 14 Steamworks Rules.²⁷

15 88. The Steamworks Rules are equally binding on publishers as the terms in the SDA
 16 but provide Valve the flexibility to change the terms without amending the contract. For
 17 example, Valve changed its Steam key request process in April 2018 to provide Valve more
 18 control over Steam keys by updating the Steamworks Documentation on Steam keys.²⁸
 19
 20

21 ²⁵ *Id.*

22 ²⁶ *Steamworks Documentation, Steamworks SDK*, <https://partner.steamgames.com/doc/sdk>
 23 (last accessed Dec. 17, 2021); Valve Corporation, *Uploading to Steam*,
<https://partner.steamgames.com/doc/sdk/uploading> (last accessed Dec. 17, 2021).

24 ²⁷ SDA §§ 2.2, 11. Steamworks is defined as “those Steam services and features
 25 described on the Steamworks partner website found at <https://partner.steamgames.com/> and any
 26 other features and services that Valve decides, in its sole discretion, to make available to Steam
 27 Account Owners and/or Company as part of Steamworks.” *Id.* § 1.19.

28 ²⁸ Valve Corporation, *New Steam Key Request Wizard for Steamworks Developers* (Apr.
 29 5, 2018), <https://steamcommunity.com/groups/steamworks/announcements/detail/1652133167126418778>.

1 89. Under the SDA, Valve collects a percentage of every sales transaction amount.²⁹
 2 Valve is the payment processor for all transactions, and it remits monthly sales revenues minus
 3 its revenue share (and other fees or holdbacks) to publishers. Publishers set their own pricing for
 4 their games on Steam.

5 90. The SDA and Steamworks Rules form a written component of the Valve PMFN,
 6 with Valve's interpretation of the provisions and aggressive enforcement actions showing the
 7 true breadth of and competitive restraint posed by the PMFN.

8 II. RELEVANT MARKET

9 91. The relevant product market is the PC game distribution market. The geographic
 10 scope is at least as broad as the United States.

11 A. The Relevant Product Market Is PC Game Distribution

12 92. At all relevant times, Valve had market power and/or substantial market power in
 13 the PC game distribution market. Valve had the power to profitably maintain the prices offered
 14 on Steam at supracompetitive levels without losing sales to other stores that offer the same
 15 games. It similarly had the power to exclude potential competitors from the PC game
 16 distribution market, harming publishers and PC gaming customers.

17 93. As an initial matter, PC games are not reasonably interchangeable with console
 18 games or mobile games. PC games are only playable on personal computers and are not
 19 compatible with game consoles (*e.g.*, Microsoft Xbox, Sony PlayStation) or mobile devices—the

21 ²⁹ Before October 1, 2018, Valve's revenue share for all sales on Steam was 30%,
 22 meaning Valve received 30% of the purchase price for any sale of a PC game on Steam, after
 23 adjusting for returns, discounts, refunds, fraud, chargebacks, and taxes. Effective October 1,
 24 2018, Valve modified the revenue share agreement to three tiers as follows: Valve takes 30%
 25 on all of a game's earnings under \$10 million; 25% on all of a game's earnings between \$10
 26 million and \$50 million; and 20% on all of a game's earnings over \$50 million. The
 27 commission also applies to game packages, DLC, in-game sales, subscription fees, sales of
 28 Workshop Contributions, and Community Marketplace game fees. Valve Corporation, *New*
 29 *Revenue Share Tiers and other updates to the Steam Distribution Agreement* (Nov. 30, 2018),
<https://steamcommunity.com/groups/steamworks/announcements/detail/1697191267930157838>; SDA §§ 1.1, 6.1, 6.6. This change is largely superficial,
 however, and the vast majority of sales to consumers through the Steam Store remain at the
 30% commission rate.

1 consumer needs the appropriate hardware. Further, PCs, consoles, and mobile devices have uses
 2 beyond gaming that affect their cost and value to the consumer.

3 94. Games made for consoles or mobile apps are not economic substitutes for games
 4 made for PCs. Other factors drive consumers' preferences. PC, console, and mobile offer
 5 different user experiences and game functionality, which are significant considerations for a
 6 consumer deciding to purchase PC games.

7 95. Customers view PC, console, and mobile gaming as economic complements,
 8 rather than substitutes, because they have different use cases. A PC game can support richer
 9 graphics and greater memory requirements than a console game or mobile game. Mobile devices
 10 in particular present processing limitations for games, making the complex animation, code,
 11 color/lighting, and audio files featured in most PC games impossible to match.

12 96. Along with better visual effects, PCs offer more immersive and customizable
 13 control options for gamers. PC gamers can plug in the equivalent of a console controller and use
 14 that for gaming purposes, but they also can use a keyboard and mouse, joystick, and numerous
 15 other types of controls. By contrast, console gamers can only use the console manufacturer's
 16 controllers, or authorized third-party controllers. Flexibility in controller type is one reason that
 17 many gamers choose PC gaming over console gaming.

18 97. Playing a game using a keyboard and/or mouse sitting in front of a PC is a wholly
 19 different playing experience than using a console connected to a television or an app installed on
 20 a small mobile device. The same titles are generally not available across PC, console, and
 21 mobile platforms, due in part to the different gameplay experiences and capability of the
 22 hardware.

23 98. Because of these differences, the cross-elasticity of demand between PC games
 24 and console games is low, and consumers will not respond to a small but significant price change
 25 for a PC game by purchasing a console game instead. There are thousands more games available
 26 for PCs than game consoles. Steam has over 50,000 games available, while Xbox One,

PlayStation 4, and Nintendo Switch each have around 3,000 games.³⁰ PC games also retail at lower average prices than console games, and the pricing difference is compounded by frequent sales on PC game digital stores. (The need to purchase the gaming console itself additionally affects cost-of-ownership disparities.)

99. The cross-elasticity of demand between PC games and mobile games is even lower as most mobile games are free to play (and supported by ads or in-game purchases). When they do have a retail price, these prices are generally lower than PC games. According to a market researcher, of the 2.6 billion mobile gamers in 2020, about 38% paid for games, and 98% of mobile gaming revenues were from in-game transactions rather than a purchase price.³¹

100. Additionally, consumers generally will not switch to a mobile game designed to be played in shorter intervals and “on the go” in response to a price increase of a PC game. Likewise, PC game consumers will not switch to mobile games in response to output decreases of PC games.

101. Gamers make deliberate choices about which hardware systems to utilize, and once that choice is made, they remain on that platform because of lock-in effects. For example, a gamer that owns an Xbox along with several Xbox accessories such as controllers cannot use the PlayStation edition of a game without duplicating all of their hardware purchases. In this regard, a major advantage and differentiator for the PC as a hardware system compared to consoles is that most people have access to a PC already, and therefore there are no additional hardware costs required for gameplay.

102. Even for gamers who already own multiple hardware systems—like gamers that own both a PC and an Xbox—versions of the same game are not interchangeable, because

³⁰ Xbox One has the fewest at about 2,700, while Switch has the most at almost 3,300.

³¹ Tom Wijman, *The World's 2.7 Billion Gamers Will Spend \$159.3 Billion on Games in 2020; The Market Will Surpass \$200 Billion by 2023*, NEWZOO (May 8, 2020), <https://newzoo.com/insights/articles/newzoo-games-market-numbers-revenues-and-audience-2020-2023/>. There are approximately 1.3 billion PC gamers, or half the number of mobile gamers, according to the study.

1 different hardware systems offer different functionality and features, as discussed above. An
 2 Xbox-enabled game cannot be run on a PC and vice versa.

3 103. Gamers also develop large game libraries on the platforms of their choice, along
 4 with social networks and other features. This makes it less likely the gamer will switch hardware
 5 system or platform. A gamer who has an extensive list of friends on Steam along with a large
 6 library of games is less likely to purchase the Xbox edition of the game available for both, even
 7 if she owns an alternative platform like the Xbox.

8 104. Similarly, if a gamer who plays multiplayer games has built a large social network
 9 on a specific gaming platform, she may lose the ability to enjoy those games with others in her
 10 social network if she switches gaming platforms. Games that allow online multiplayer gaming
 11 do not always allow the players on each platform to game together across different hardware
 12 systems or different gaming platforms. For example, a game released on both PC and
 13 PlayStation does not necessarily allow the PC gamers to play with the PlayStation gamers. The
 14 same is true across PC gaming platforms like Steam and the Epic Games Store.

15 105. Given the differences in the games themselves, PC game distribution also differs
 16 from distribution models used for console and mobile games. The differences inform the distinct
 17 distribution markets for PC games, console games, and mobile apps. PC games moved to digital
 18 distribution earlier than console games, which still have a significant physical distribution
 19 component.³² Mobile games are solely digitally distributed and are available on mobile app
 20 stores accessible from and optimized for a mobile device.

21 106. Mobile app stores do not sell PC games, and PC game stores do not sell mobile
 22 apps, though occasionally different versions of the same title might be available as a PC game
 23 and a mobile app. Similarly, consoles have their own digital storefronts specific to the brand
 24 (e.g., PlayStation or Xbox) that do not sell PC games, and vice versa. Because the applications
 25

26 32 Riordan Zentler, *Digital vs. physical: How the video game industry learned from*
 27 *Microsoft's missteps*, THE SPOKESMAN-REVIEW (Apr. 30, 2020), <https://www.spokesman.com/stories/2020/apr/30/digital-vs-physical-how-the-video-game-industry-le/>.

1 are downloaded on the device after purchase, they must be accessed by the compatible device—
 2 PC, console, or mobile device. A publisher cannot sell its PC game on the PlayStation Store or
 3 the Apple App Store, for example, in response to Valve’s supracompetitive revenue sharing
 4 requirement.

5 107. Valve itself recognizes that PC games do not compete with mobile games.³³
 6 Valve has stated, “Valve does not make or sell phones, tablets, or video games for mobile
 7 devices, or otherwise compete in the mobile market. Valve also operates Steam, an online
 8 platform that lets users purchase and play PC games on their laptops and desktops. Steam users
 9 cannot buy or use mobile apps on Steam.”³⁴ Valve adds that it “does not compete in the mobile
 10 market or sell ‘apps.’”³⁵

11 108. Additionally, the size of game files helps explain why games on different
 12 platforms (PC, console, and mobile) are complements rather than substitutes, and why their
 13 distribution channels also are not reasonably interchangeable. Factors that affect playability and
 14 the user experience include rich graphics and textures, audio, and maps; these add significant
 15 data volume. The average size of an iOS mobile game in 2020 was 465 MB, while in 2016 it
 16 was only 264 MB.³⁶ Even the most basic PC game is generally larger than that, with richer
 17 graphics and higher resolution textures.³⁷

18 109. While some game developers release the same title for both PC and console, they
 19 must design and code a different version of the game to be played on a console. Game
 20 executables created for a PC cannot be used on a console or a mobile device. Publishers must

22 ³³ See, e.g., February 18, 2021 Joint Letter Brief Regarding Apple’s Subpoena to Non-
 23 Party Valve Corporation, *Epic Games, Inc. v. Apple, Inc.*, No. 4:20-cv-05640-YGR (N.D. Cal.),
 ECF No. 346.

24 ³⁴ *Id.* at 5.

25 ³⁵ *Id.* at 7.

26 ³⁶ Craig Chapple, *The Average Size of the U.S. App Store’s Top Games Has Grown 76% in Five Years*, Sensor Tower (Mar. 9, 2021), <https://sensortower.com/blog/ios-game-size-growth-2020>.

27 ³⁷ Jarred Walton, *Why are game install sizes getting so big?*, PC GAMER (Oct. 31, 2019), <https://www.pcgamer.com/why-are-game-install-sizes-getting-so-big/>.

1 expend significant time and resources to redesign and recode the game to be compatible with the
 2 different platform, a process called “porting.” Game developers and publishers incur costs when
 3 trying to port their games from one hardware system to the other, including development costs,
 4 organizational costs, and quality-control costs. Mobile games for iOS require a different
 5 programming language than games built for Android, increasing development costs. And these
 6 differ from the languages most commonly used for PC games and console games.

7 110. Further, the developer must account for the differences between PC game
 8 distribution, console game distribution, and mobile game distribution. The developer will have
 9 to incorporate the SDKs for the appropriate hardware device or site, such as Xbox or Steam.

10 111. The SDKs for Xbox, PlayStation, and Nintendo Switch are not publicly available
 11 to developers—developers must be approved by Microsoft, Sony, and Nintendo, respectively,
 12 prior to developing a version of their game for those consoles. This makes it more difficult for
 13 publishers to switch to a console game as a substitute for a PC game due to PC game distribution
 14 restrictions or prices, like those imposed by Valve. Development on some consoles also requires
 15 specialized developer hardware units that can cost several thousand dollars and be difficult to
 16 obtain, increasing the barriers to entry into the console market.

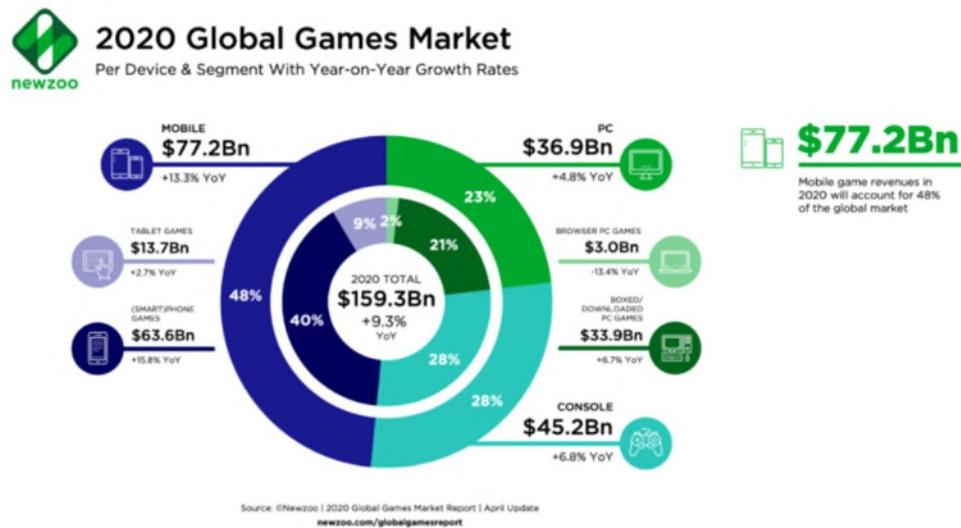
17 112. Further preventing substitutability, these hardware systems look to Steam sales
 18 and reviews as an indicator of market viability when evaluating PC games to port over to their
 19 systems. Consoles therefore cannot be used by a publisher to substitute away from distribution
 20 through Steam.

21 113. Accordingly, PC publishers cannot simply substitute to development of mobile or
 22 console games in response to Valve’s supracompetitive revenue share percentage on PC games.
 23 They likewise cannot substitute to distribution channels for console or mobile games to sell their
 24 PC games.

25 114. PC games have different monetization strategies than console games and mobile
 26 games, which also affect their design and distribution strategies. PC game publishers are not
 27 competing with console developers or mobile developers for distribution access or customers.

1 115. Industry participants and analysts also recognize PC games, console games, and
 2 mobile games as separate categories and track and report metrics for each category.³⁸

3 116. In the below market summary, the website NewZoo breaks the “Global Games
 4 Market” into three categories: PC games (including both desktop and non-desktop, e.g., browser-
 5 based), console games, and mobile games:³⁹



16 117. Games in the non-desktop subcategory above are not substitutable with PC
 17 desktop games. These browser games, playable on websites like Facebook and others, are at the
 18 very low end of the broader gaming universe. Before mobile devices and games grew in
 19 popularity, browser-based games like Farmville were a popular way to enjoy low-fidelity social
 20 games. Given the limited technical capabilities web browsers have historically provided, these

22 ³⁸ Editorial Team, *Segmenting The Video Game Market 101*, DFC INTELLIGENCE (May 7,
 23 2019), <https://www.dfcint.com/dossier/segmenting-video-game-market/>; *Market Analysis*
 24 *Report, Gaming Market Size, Share & Trends Analysis Report By Device (Console, Mobile,*
Computer), By Type (Online, Offline), By Region (North America, Europe, APAC, LATAM,
MEA), And Segment Forecasts, 2018 – 2025, GRAND VIEW RESEARCH (Jan. 2018),
<https://www.grandviewresearch.com/industry-analysis/gaming-industry>.

25 ³⁹ Wijman, *The World's 2.7 Billion Gamers Will Spend \$159.3 Billion on Games in 2020;*
 26 *The Market Will Surpass \$200 Billion by 2023*, *supra* note 31. This analysis also subdivides
 27 the \$36.9 billion PC Games Market into a \$33.9 billion “Boxed/Downloaded PC Games”
 market (a.k.a. PC Desktop Games) and a \$3 billion “Browser PC Games” market, which as
 mentioned below, is trending downwards and primarily competes against mobile games.

1 browser-based games were largely “casual” games meant to cater to a broad audience. Although
 2 these browser-based games were technically run from PCs, they were not installed on the user’s
 3 machine, were limited by the capabilities of internet browser interfaces, and were inferior to
 4 mobile games in that such browser-based games traditionally tethered the gamer to the PC itself,
 5 preventing gamers from squeezing in a short session on their mobile device while, for example,
 6 waiting for the bus. As smartphones gained in popularity starting in 2007, web browser game
 7 developers shifted more and more resources to mobile gaming. Today, although web browser
 8 games still exist, they are much rarer than before and primarily compete with mobile games.

9 118. This Complaint uses “PC games” to refer to those games installed on a user’s
 10 machine, *i.e.*, PC desktop games, but to exclude web browser games, *i.e.*, non-desktop games,
 11 even though those games are sometimes played while using a PC.

12 119. Valve has emphasized the distinctions between the different types of gaming
 13 markets in a response to a third-party subpoena in an antitrust case between Epic and Apple in
 14 the Northern District of California.⁴⁰ There, Valve made the following admissions regarding the
 15 definition of the relevant product market:

- 16 • “Valve is a privately held company with approximately 350 employees that develops PC
 17 video games. Valve does not make or sell phones, tablets, or video games for mobile
 18 devices, or otherwise compete in the mobile market. Valve also operates Steam, an
 19 online platform that lets users purchase and play PC games on their laptops and desktops.
 20 Steam users cannot buy or use mobile apps on Steam.” Valve Letter Brief at 5.
- 21 • “Apple, Google and Samsung compete with each other in the mobile app market. Valve
 22 does not compete in that market. The Court already recognized the relevant market must
 23 include the product at issue. (Case No. 20-cv-05640-YGR) (Dkt. 118 at 12) (citation
 24 omitted). Apple argues the relevant market could be so broad as to include any video

26 ⁴⁰ See, e.g., February 18, 2021 Joint Letter Brief Regarding Apple’s Subpoena to Non-
 27 Party Valve Corporation, *Epic Games, Inc. v. Apple, Inc.*, Case No. 4:20-cv-05640-YGR, (N.D.
 Cal. Feb. 18, 2021) ECF No. 346 (the “Valve Letter Brief”).

1 game available through any channel, but gives no evidence this might actually be true.
 2 Indeed, the Court noted there is ‘little evidence’ iOS users owned multiple devices and
 3 changed from one to another in response to price changes. *Id.* at 17 n.19.” Valve Letter
 4 Brief at 6–7.

5 120. Valve made these statements to maintain that it should not be subject to discovery
 6 in the *Epic* case because it was not participating in the same relevant market as the two litigants.
 7 Valve’s concession that the mobile market and PC games market are different markets holds true
 8 for the console market as well. Valve does not sell, market, or compete in the market for game-
 9 console games.

10 121. In sum, the PC game distribution market is different from, and does not include,
 11 console and mobile game distribution.

12 **B. The Relevant Geographic Market Is at Least as Broad as the United States**

13 122. The relevant geographic market for PC game distribution is at least as broad as
 14 the United States. Valve distributes games for sale over the internet, and Steam is available
 15 anywhere in the world to a user with an internet connection.

16 123. According to Valve, Steam store sales revenues are approximately evenly divided
 17 between North America (34%), Western Europe (29%), and the rest of the world (37%) as
 18 consumers can purchase games on Steam worldwide.

19 124. Valve promotes Steam as a way for publishers to “reach a global audience”:
 20 “With over 120 million monthly active users across 249 countries, Steam gives you access to a
 21 worldwide community of players.”⁴¹

22 125. Valve further promotes: “Steam is a global platform with official support for 26
 23 languages across many platform features. Supporting as many languages, currencies and

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 25
 26
 27 ⁴¹ *Steamworks Documentation*, <https://partner.steamgames.com/#cat-globalaudience> (last accessed Dec. 17, 2021).

payment methods as possible enables Steam to provide the best experience possible to customers around the world.”⁴²

126. The SDA provides that “[a]ny Territory restrictions, if any, shall apply to the sale or initial distribution of the Application” but requires the publisher to “acknowledge[] and agree[] that, since Steam Account Owners can access their accounts from anywhere, Steam Account Owners may receive subsequent distributions of Applications from places outside the Territory.”⁴³ The lack of any real geographic limitation is further exhibited by the definition of “Territory” as “worldwide,” unless the publisher “has restricted an Application’s distribution territory through the online tools provided by Valve for this purpose.”⁴⁴

127. Steam hosts games from developers all over the world, and the Steam Workshop, a community content marketplace, includes contributors from 75 countries.

128. The majority of PC game distribution through other channels besides Steam is likewise digital and lacks any geographic constraints. For example, Epic claims its Creators represent 235 countries and territories.⁴⁵ EA's Origin includes 33 country-specific stores, with users in any other country defaulting to the closest store.

III. VALVE'S MARKET POWER

129. Publishers must market games that are enabled for Steam to ensure they can reach their consumers, providing Valve with immense market power in PC game distribution. Due to its large market share and user base, game publishers generally consider Steam a must-have. As put by one game publisher, “As a developer, it’s scary to have one entrenched company dominating all of PC games since we are completely at Valve’s mercy.”⁴⁶

⁴² Steamworks Documentation, Localization and Languages, <https://partner.steamgames.com/doc/store/localization> (last accessed Dec. 17, 2021).

43 SDA § 3.6.

44 *Id.* § 1.25.

⁴⁵ *Epic Games Store 2020 Year in Review*, *supra* note 19.

⁴⁶ Nick Statt, *Epic vs. Steam: The Console War Reimagined On The PC*, THE VERGE (Apr. 16, 2019), <https://www.theverge.com/2019/4/16/18334865/epic-games-store-versus-steam-valve-pc-gaming-console-war-reimagined>.

1 130. Publishers do not have other distribution options to avoid using Steam yet still
 2 reach customers. As noted above, most third-party retailers are in fact selling Steam keys,
 3 meaning the games are played using the Steam gaming client.

4 131. The few stores that offer their own gaming client and content delivery system,
 5 *i.e.*, platform. are not options for many publishers because (a) they only host and sell their own
 6 games; (b) they only take high-profile games or games with a proven sales record to draw
 7 gamers from Steam, using Steam sales as a barometer of success; or (c) they offer only DRM-
 8 free games, meaning publishers do not have any anti-piracy protections.

9 132. Most publishers also cannot avoid using Steam keys (to make sales outside the
 10 Steam Store) by self-publishing their games. Almost all game developers lack the resources to
 11 establish and maintain their own digital storefront, including the ability to combat credit card
 12 fraud that is rampant in the industry. It also takes significant resources to establish the content
 13 delivery network and digital rights management (“DRM”) tools necessary to distribute a
 14 publisher’s game(s).

15 133. For example, after Tiny Build began investing in games in addition to its internal
 16 development of games, it attempted to run its own store to avoid Steam’s pricing restrictions and
 17 revenue share. It closed down after just a few months due to crippling credit card chargebacks.

18 134. Even if publishers could overcome the financial and other barriers to entry, it
 19 would be almost impossible to attract a user base due to Valve’s dominant position and
 20 anticompetitive conduct to prevent new entry and expansion.

21 135. As discussed further below, even gaming behemoths with popular games have
 22 been unable to gain sufficient market share in the PC game distribution market because of
 23 Valve’s conduct to control pricing and remove marketing strategies that publishers and
 24 competing stores could use to attract and retain game buyers.

1 136. As EA, a multi-billion-dollar AAA game studio,⁴⁷ explained, it has to put its
 2 games on Steam to be “where the players are”—self-distribution through its own store was
 3 insufficient to compete despite the popularity of its games.⁴⁸ The players are all on Steam
 4 because of Valve’s anticompetitive conduct to foreclose alternative distribution channels and
 5 keep publishers reliant on Steam and Steam keys to reach customers.

6 137. According to a long-time Valve employee, “Valve was really all about controlling
 7 the flow of an entertaining experience. Having your hand on that knob, deciding when to turn it
 8 up, turn it down.” Thus, the company’s name, “Valve,” was a “compelling metaphor.”⁴⁹

9 138. The vast majority of all PC games are played today on Steam. As explained by an
 10 EA executive, PC game publishers “want to be where the players are,” meaning Steam.⁵⁰ During
 11 the COVID-19 pandemic, for example, there were more than 22 million users on Steam in a
 12 single day, and over 6.2 million gamers playing games at the same time.⁵¹

13 139. The PC game distribution market has many barriers to entry that reinforce Valve’s
 14 dominance and market power. These barriers are typical of technology platforms generally. As
 15 discussed in the Digital Markets Report, typical barriers to entry for technology platforms

20 21 ⁴⁷ “AAA studio” is an informal characterization that applies to large game studios with
 22 multi-million-dollar development and marketing budgets. They are usually assumed to have
 23 the highest quality and most sophisticated games.

24 25 ⁴⁸ Chaim Gartenberg, *EA games are returning to Steam along with the EA Access*
 26 *subscription service*, THE VERGE (Oct. 29, 2019), <https://www.theverge.com/2019/10/29/20937055/ea-games-steam-access-subscription-service-pc-storefront-jedi-fallen-order-sales>.

27 28 ⁴⁹ Youtube.com, “Icons: Valve and Half-Life” (June 9, 2008),
 29 <https://youtu.be/HUmbVRuT4wo?t=131>.

30 ⁵⁰ Gartenberg, *supra* note 48.

31 ⁵¹ James Batchelor, *Record number of Steam users online during coronavirus outbreak*,
 32 GAMESINDUSTRY.BIZ (Mar. 16, 2020), <https://www.gamesindustry.biz/articles/2020-03-16-record-number-of-steam-users-online-during-coronavirus-outbreak>.

include network effects,⁵² switching costs,⁵³ the accumulation of data,⁵⁴ and economies of scale and scope.⁵⁵ All of these barriers to entry apply to the PC game distribution market in general, and to Steam in particular. According to a former Valve employee, “in the Internet age, software has close to zero cost of replication and massive network effects, so there’s a positive feedback spiral that means that the first mover dominates.”⁵⁶

140. Steam connects gamers to gamers and gamers to publishers. As more gamers engage with Steam, its value increases for both gamers (direct network effects through the ability of gamers to find others to play games with and to develop a more robust social network) and publishers (indirect network effects through access to more gamers). In turn, more publishers on Steam increases its value for gamers (further indirect network effects).

141. Steam's gaming platform includes social-networking features, communities of game "modders," and an achievement system where gamers could track their progress on games. Today, gamers with Steam accounts can create a social network of friends and teammates that any game on the platform can access. This means that gamers do not need to search for their friends each and every time they purchase a new computer game or want to play a game they already own with friends; they can log on to Steam and can see who is online or invite friends through the platform to join them in a game.

⁵² Majority Staff Report and Recommendations, Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary, *Investigation of Competition in Digital Markets* (Oct. 6, 2020) https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519 (“Digital Markets Report”) at 40.

⁵³ *Id.* at 41.

⁵⁴ *Id.* at 42-44.

55 *Id.* at 45.

⁵⁶ Michael Abrash, *Valve: How I Got Here, What It's Like, and What I'm Doing*, RAMBLINGS IN VALVE TIME (Apr. 13, 2012), <https://web.archive.org/web/20140328192642/http://blogs.valvesoftware.com/abrash/valve-how-i-got-here-what-its-like-and-what-im-doing-2/>.

1 142. Moreover, “[i]n many cases, large technology firms can maintain market power in
 2 part because it is not easy for users to switch away from the incumbent’s technology.”⁵⁷ While it
 3 is possible to “multi-home” on PC gaming by installing multiple gaming platforms, Steam
 4 creates strong lock-in effects through a user’s game library and data in the form of achievements
 5 and social connections.

6 143. As noted, Valve collects detailed data on game usage, game preferences, social
 7 networks, and other activity on Steam. These data collection practices enhance Valve’s market
 8 power. The accumulation of such data “can serve as another powerful barrier to entry for firms
 9 in the digital economy” and “data-rich accumulation is self-reinforcing.”⁵⁸ As explained by the
 10 American Bar Association’s Antitrust Law Section:

11 Big data and data analytics can create and amplify feedback effects. For example, more
 12 people using a product can mean that more data, and more diverse data, will be
 13 collected, allowing the company to both improve its products as well as potentially
 14 identify and offer new ones. This in turn can attract more customers, leading to a
 15 positive feedback loop, helping a company to grow and potentially dominate the
 16 market. Indeed, data-driven markets may “tip towards one or two products or
 17 platforms.”⁵⁹

18 144. Valve also gains access to, and utilizes, detailed information about its
 19 competitors’ businesses. Valve is the gatekeeper for Steam, and sets the terms and conditions on
 20 which its game-publisher rivals can access it. This allows Valve to favor or punish specific
 21 games or publishers, or change the rules when Valve feels threatened in any way by specific
 22 game publishers or rivals in the market for PC game distribution. It is not unusual for games
 23 developed by insider friends or relatives of Valve employees to mysteriously have much greater
 24 visibility on the store than those by outsiders. Valve can also refuse to feature games that it

25 ⁵⁷ Digital Markets Report, *supra* note 52, at 41.
 26 ⁵⁸ *Id.* at 42.
 27 ⁵⁹ American Bar Association’s Antitrust Law Section, *Artificial Intelligence & Machine
 28 Learning: Emerging Legal and Self-Regulatory Considerations*, ABA (Sep. 30, 2019)
https://www.americanbar.org/content/dam/aba/administrative/antitrust_law/comments/october-2019/clean-antitrust-ai-report-pt1-093019.pdf (“ABA Big Data Report”) at 30 (citing ALLEN
 GRUNES & MAURICE STUCKE, BIG DATA & COMPETITION POLICY 163 (2016)).

1 considers threatening, or otherwise punish such games and reduce their visibility on the Steam
 2 Store, including for violating the Valve PMFN and other restrictions.

3 145. Valve's ability to function as a gatekeeper distorts competition because publishers
 4 must weigh the risks of retaliation, including removal from the store or negative reviews that
 5 bury a game's visibility on the store. As owner of the Steam Store, which is the primary means
 6 for publishers to reach gamers anywhere in the PC gaming ecosystem, Valve has further
 7 gatekeeping power over the industry as a whole. Valve has unlimited power to promote Valve's
 8 own games on the store (and demote others). Valve can add demonstration ("demo") versions of
 9 its games directly to every consumer's library, and ensure its own games are at the top of sale
 10 queues presented to users. Valve also monitors point-of-sale transactions and microtransactions
 11 for its competitors' games.

12 146. Valve further has the ability to reject games from its store at any moment, even
 13 after they have launched. Valve has retroactively removed games that consumers have already
 14 bought, deleting them from their hard drive. Valve has removed games because they offend the
 15 sensibilities of a specific reviewer, even if they would have been accepted by a different one.
 16 This can also give governments power over business in other countries. For example, the Steam
 17 Store in China has banned all but 53 of the 21,131 games available internationally, and the Steam
 18 Store worldwide has refused to publish video games like "Liberate Hong Kong."

19 147. Even the largest publishers in the world consider Steam a must-have, and their
 20 experience demonstrates that creating a rival PC gaming platform is virtually impossible given
 21 Valve's dominance and anticompetitive conduct. EA is a major publisher of games, earning \$5.5
 22 billion in gaming revenue per year.⁶⁰ EA spent approximately eight years on a business strategy
 23 to grow its own gaming platform, Origin, by mandating that all games published by EA be
 24 played on Origin. Despite its commercial success as a publisher, EA was unable to get Origin

25
 26
 27 ⁶⁰ Top 10 Biggest Video Game Companies in the World, ALL TOP EVERYTHING,
 https://www.alltopeverything.com/top-10-biggest-video-game-companies/_

1 off the ground. In 2019, EA abandoned its PC gaming platform strategy and again began selling
 2 its games enabled for Steam.⁶¹

3 148. As detailed below in Section V, other large game publishers that similarly
 4 engaged in strategies to avoid Steam, including Microsoft, Humble Publishing, and Epic,
 5 likewise failed to develop a robust commercial strategy away from Steam.

6 149. Very few PC games have found success outside of Steam, and such games
 7 typically require a long history of recognition and success before they can attempt to thrive
 8 without Steam. For example, League of Legends was released in 2009. Riot, the publisher of
 9 League of Legends, was able to circumvent Valve's dominance, but only because League of
 10 Legends has such a large, entrenched, and longtime user base that is willing to use Riot's League
 11 of Legends' launcher (essentially a rival platform) instead of Steam.

12 150. Such games are rare—the Steam Store has over 50,000 games available, yet the
 13 number of PC game franchises that can avoid Steam entirely can be counted on two hands.

14 151. Valve has also increased its market power through the sale and facilitation of
 15 ancillary services on Steam. For example, Valve runs a “Steam Workshop,” which it describes
 16 as a “central hub of player-created content and tools to publish, organize, and download that
 17 content into your games.”⁶² Participants can create digital goods and modifications in the Steam
 18 Workshop that can be sold to other gamers. This marketplace provides ancillary revenue for
 19 Valve: When digital goods are sold through the Steam Workshop, Valve collects 75% of the
 20 sale price, leaving 25% for the creator.⁶³

21
 22
 23
 24 ⁶¹ Gartenberg, *supra* note 48.

25 ⁶² *Steam Workshop, About Workshop*, VALVE,
<https://steamcommunity.com/workshop/workshopsubmitinfo/#:~:text=The%20Steam%20Workshop%20is%20a,that%20content%20into%20your%20games>.

26 ⁶³ Tim Colwill, *Valve is not your friend, and Steam is not healthy for gaming*, POLYGON
 27 (May 16, 2017), <https://www.polygon.com/2017/5/16/15622366/valve-gabe-newell-sales-origin-destructive>.

1 152. Valve has bragged about how much money it pays such creators of digital goods,
 2 claiming it paid more than \$57 million to Steam Workshop creators.⁶⁴ But the \$57 million in
 3 payments to creators implies Valve made \$171 million in profit merely by inserting itself as a
 4 middleman between the innovative good creators and their customers.⁶⁵ This highlights Valve's
 5 ability to extract supracompetitive profits through its market dominance.

6 153. Valve's market power also is demonstrated by the anticompetitive effects detailed
 7 throughout this Complaint. As described herein, Valve's conduct has led to supracompetitive
 8 prices in the market for PC game distribution and a reduction in market-wide output (in terms of
 9 quality, innovation, and choice). Because of Valve's anticompetitive restrictions, gamers cannot
 10 reap any benefits by shopping at rival distributors, which explains why Valve's market share
 11 remains over 75%, notwithstanding other potential competitors in the distribution market.

12 **IV. VALVE HAS UNLAWFULLY RESTRAINED TRADE AND MONOPOLIZED
 THE RELEVANT MARKET**

14 154. Valve engages in a scheme to maintain its dominance in the PC game distribution
 15 market through multiple tactics and restrictions, each of which is intertwined with and amplified
 16 by the others, including: (a) the Valve PMFN imposed on publishers; (b) the Steam key
 17 authorization system; and (c) Steam store reviews, the game recommendation algorithm, and
 18 other enforcement mechanisms.

19 155. As a direct consequence of Valve's anticompetitive conduct, Plaintiffs: (a) paid
 20 Valve a supracompetitive revenue share; (b) could not take advantage of better revenue share
 21 agreements offered, or that would be offered, on other stores; and (c) could not engage in
 22 exclusives on other stores, thereby depriving Plaintiffs of additional game sales and better
 23 marketing support.

26 ⁶⁴ *Id.*
 27 ⁶⁵ *Id.*

1 **A. Valve Requires Publishers to Agree to an Anticompetitive MFN**

2 156. Valve requires that publishers offer the best price for their products on Steam, a
 3 type of “most favored nations” (“MFN”) provision. A particular type of MFN called a Platform
 4 MFN (or “PMFN”) occurs when an online platform requires that providers using its platform not
 5 offer their products or services at a lower price on other platforms.

6 157. There are well-known anticompetitive effects that can result from the imposition
 7 of MFN clauses by companies with durable market power. Economists increasingly recognize
 8 that Platform MFNs in particular can harm competition by “keeping prices high and
 9 discouraging the entry of new platform rivals.”⁶⁶ Platform MFNs guarantee that other platforms
 10 cannot charge a “lower final price, not because the focal platform has worked to ensure that it
 11 has the lowest cost, but rather because it has contracted for competitors’ prices to be no lower.”⁶⁷

12 158. Valve imposes such a PMFN on game publishers that list games and DLC in the
 13 Steam Store (the “Valve PMFN”). Like PMFNs generally, the Valve PMFN compels publishers
 14 to sell their games at the Steam Store price (or higher) in *all* distribution channels, even
 15 distribution channels that do not involve connection to or enablement for Steam.

16 159. Valve’s restrictions also serve to guarantee Valve the earliest access to any game
 17 or add-on content, removing an important promotional tool that publishers could use to attract
 18 customers to other stores that offer the publishers more favorable distribution terms.

19 **1. The Valve PMFN Creates a Price Floor**

20 160. MFNs can be procompetitive when they control costs and therefore keep down
 21 prices to end customers. For example, a large buyer may have an MFN with a supplier
 22 guaranteeing it the same pricing as the supplier provides to any other buyer. This may allow the
 23 buyer to control its costs for that input and ensure it is receiving the supplier’s most competitive

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 26 ⁶⁶ Jonathan B. Baker & Fiona Scott Morton, *Antitrust Enforcement Against Platform*
 MFNs, 127 Yale L.J. 2176, 2201 (May 2018) (“Baker I”).

27 ⁶⁷ *Id.* at 2178.

1 pricing. This may ultimately allow the buyer to maintain lower prices for its products using the
 2 input.

3 161. Valve is not purchasing a product from the publisher, and the Valve PMFN is not
 4 helping Valve control costs and receive competitive prices for its inputs vis a vis its competitors.
 5 Rather, Valve's PMFN is controlling the terms of the transaction between the publisher and
 6 customer, including for transactions that take place off of the Steam site. The PMFN sets a price
 7 floor throughout the market, and sets it at an elevated level because the publisher must account
 8 for Valve's 30% commission in choosing its retail price. The publisher must then use this same
 9 retail price at other stores regardless of the more favorable revenue sharing terms or other
 10 advantageous distribution terms it may receive from those stores.

11 162. Rather than ensuring its customers the lowest prices, the Valve PMFN results in
 12 higher prices paid by its PC gaming customers and/or reductions in output and/or quality of
 13 games. Publishers cannot use lower pricing or other marketing tactics to compete to attract
 14 customers to other distribution channels where publishers get to keep more of the purchase price
 15 of their games. Publishers remain reliant on Steam to publish their games and cannot put
 16 downward pressure on Valve's commission rate by working with Steam's competitors. In other
 17 words, the principal beneficiary of Valve's PMFN is Valve itself.

18 163. Valve's PMFN is similarly keeping prices elevated because publishers must
 19 account for Valve's supracompetitive 30% commission rate when setting them. Publishers
 20 cannot then discount the same product on another store to take advantage of more favorable
 21 commission rates, which would create competitive pressure for Valve to lower its
 22 supracompetitive commission.

23 **2. Publishers Must Comply with Valve's PMFN**

24 164. The specific form and language of the Valve PMFN has changed over time, and
 25 encompasses both written (including the SDA and Steamworks Rules) and unwritten rules
 26 enforced by Valve against publishers. The one constant is Valve's enforcement of pricing parity
 27 across the market.

1 165. The written rules include the SDA and Steamworks Rules. Valve enforces the
 2 latter as equally binding on publishers as the contract. For example, in November 2019, Valve
 3 banned approximately 1,000 games from Steam in a single day for allegedly abusing “some
 4 Steamworks tools.” These games included legitimate games that had thousands of purchases and
 5 reviews.⁶⁸

6 166. The Steamworks Documentation on Steam keys requires Developers to offer
 7 games on other stores at prices no lower than on Steam, imposing a corresponding MFN on the
 8 base game as the DLC clause imposes on DLC and ensuring a platform-wide restriction. Valve’s
 9 own published interpretation and its guidelines for publishers make the existence of the price
 10 parity restrictions clear to publishers. The Steam Keys Rules and Guidelines section states, for
 11 example:

- 12 • “We ask you to treat Steam customers no worse than customers buying Steam keys
 outside of Steam.”
- 13 • “You should use keys to sell your game on other stores in a similar way to how you
 sell your game on Steam. It is important that you don’t give Steam customers a
 worse deal.”
- 14 • “It’s OK to run a discount on different stores at different times as long as you plan to
 give a comparable offer to Steam customers within a reasonable amount of time.”
- 15 • “Keep in mind that the perceived price in the bundle/subscription should be a price
 you are willing to run the game at a standalone price or discount on Steam. . . . We
 want to avoid a situation where customers get a worse offer on the Steam store,
 so feel free to reach out to us via the Developer Support tool if you want to talk
 through a specific scenario.” (emphasis in original)
- 16 • “We reserve the right to deny requests for keys or revoke key requesting privileges
 for partners that are abusing them or disadvantaging Steam customers.”
- 17 • “If we detect that you have requested an extreme number of keys and you aren’t
 offering Steam customers a good value, we may deny your request.”
- 18 • “We reserve the right to remove key requesting privileges from any partner whose
 sole business is selling Steam keys and not providing value or a fair deal to Steam
 customers.”

26 68 Alex McHugh, *1000 games removed from Steam due to Steamworks ‘abuse’*, GREEN
 27 MAN GAMING (Nov. 26, 2019), <https://www.greenmangaming.com/newsroom/2019/11/26/1000-games-removed-from-steam-due-to-steamworks-abuse>.

1 (collectively, “Steam Key Rules”).⁶⁹

2 167. Although Valve avoids using the word “price” in most of the above statements, it
 3 is well understood by industry participants that “deal,” “offer,” and “value” mean price,
 4 consistent with those terms’ common usage. This understanding comes in part from Valve’s
 5 enforcement of the terms as requiring price parity across stores and forbidding publishers from
 6 offering a lower price on another store than the price at which the game is available on Steam.

7 168. A prior version of this language read: “You are welcome to generate keys for
 8 resale with other retailers, including your own website. However, *your product must also be*
 9 *available for sale on Steam*. If you are hoping to receive exposure to Steam customers, *the price*
 10 *on Steam will have to match prices elsewhere.*”⁷⁰ In other words, Valve told game developers
 11 that they would be punished by losing “exposure to Steam customers” if they did not have equal
 12 prices across all distributors.

13 169. Not only does Valve require price parity, but it also controls the price publishers
 14 set for their games. In the Steamworks Rules, Valve makes explicit that “*Initial pricing as well*
 15 *as proposed pricing adjustments will be reviewed by Valve* and are usually processed within one
 16 or two business days.”⁷¹ Under the Valve PMFN, publishers cannot offer their games at lower
 17 prices elsewhere, even when they are selling non-Steam versions of games. Accordingly, Valve
 18 has the ability to control publishers’ retail prices and set a benchmark—elevated—price for the
 19 market.

20 170. As explained by the founder and CEO of Epic Tim Sweeney, “Steam has veto
 21 power over prices, so if a multi-store developer wishes to sell their game for a lower price on the
 22

23
 24 ⁶⁹ Valve Corporation, *Steam Keys*, <https://partner.steamgames.com/doc/features/keys> (last
 accessed Dec. 17, 2021).

25 ⁷⁰ *Steamworks Documentation, Steam Key Rules and Guidelines*, (dated Sept. 1, 2017),
 26 <https://web.archive.org/web/20170901192842/https://partner.steamgames.com/doc/features/key>
 s.

27 ⁷¹ *Steamworks Documentation, Store Presence, Pricing*,
<https://partner.steamgames.com/doc/store/pricing>.

1 Epic Games store than Steam, then: 1.) Valve can simply say ‘no.’”⁷² Mr. Sweeney also
 2 observed that “the only way for creators to pass savings onto gamers is by avoiding the dominant
 3 store [i.e., Steam].”⁷³ But creators are not able to avoid Steam due to Valve’s anticompetitive
 4 conduct.

5 171. Through the Valve PMFN, Valve gains the ability to control—including through
 6 punishment and threats—publishers who attempt to steer customers to alternative distribution
 7 options. If publishers do not abide by Valve’s mandates, they risk losing access to Steam
 8 altogether, which would be devastating to their businesses.

9 172. The SDA also suppresses competition through the DLC clause. DLC refers to
 10 downloadable content, which is digital content a consumer can add onto a complete video game.
 11 DLC may consist of cosmetic changes such as new character “skins” or costumes, or new stories,
 12 modes, or missions that provide hours of additional playing time.

13 173. The SDA defines DLC as “any online content, features or software specific to an
 14 Application that is made available by Company for purchase, download or online access
 15 separately from the Application, whether through in-application purchase transactions or
 16 otherwise (for example, but without limiting the foregoing, Application-themed virtual items,
 17 expansion packs, additional filters, codecs, stock multimedia, game scenarios or levels,
 18 additional functionality, etc.). DLC also includes any services provided with respect to an
 19 Application in exchange for a subscription payment.”⁷⁴

20 174. The DLC clause reads as follows:

21 DLC. If Company distributes the Application through any other (non-Steam)
 22 distribution channel, and if Company distributes any material DLC for the
 23 Application through that other channel, it will deliver the DLC to Valve at the same
 24 time such that Steam Account Owners will receive comparable DLC with
 25 customers acquiring the Application through other channels.

26 ⁷² Tim Sweeney, *@TimSweeneyEpic tweet* (Jan. 30, 2019), <https://twitter.com/TimSweeneyEpic/status/1090663312814157824>.

27 ⁷³ Tim Sweeney (@tTimSweeneyEpic), Twitter (Feb. 2, 2019, 12:30 PM),
<https://twitter.com/TimSweeneyEpic/status/1091750761392979968>.

28 ⁷⁴ Steam Distribution Agreement (“SDA”) § 1.11.

1 Company is free to offer special and unique promotional content through other
 2 distribution channels, provided that material parity is maintained between Steam
 3 Account Owners and users of other distribution channels who make a comparable
 4 investment in the Application and the associated DLC.⁷⁵

5 175. The DLC clause forbids publishers from offering their DLC on another store at a
 6 lower price than the one available on Steam and locks in the retail price throughout the market.
 7 Further, publishers cannot offer exclusive DLC or earlier release dates for DLC to attract
 8 consumers to a different store that offers the publisher a more favorable revenue share than
 9 Valve's 30% commission. Valve's requirement of "material parity" is enforced by Valve to
 10 mean the publisher must provide the DLC at the same price on the other storefront as it is priced
 11 on Steam, despite Steam's higher revenue share.

12 176. DLC can be a significant source of revenue to Developers. Accordingly, Valve's
 13 restrictions on publishers' DLC have significant effects on publishers' ability to market and earn
 14 revenue from their DLC. In a 2019 survey, 87% of gamers reported that they purchased DLC.
 15 As examples, each player of the decade-old game League of Legends spent an average of \$92 on
 16 DLC for the game in 2019, and Valve's game Counter-Strike saw an average \$70 spend per
 17 player.⁷⁶

18 177. Indie developers also benefit from DLC, particularly to drive sales later in the
 19 lifecycle of a release. As examples:

- 20 • EXOR Studios reported sales of its game X-Morph: Defense were about 80,500 copies
 21 of the base game and 73,300 total units of its three DLC offerings. Its bundled
 22 "complete version," including the game and DLC, accounted for almost half its sales.
 23
 24 • The studio Fellow Traveler reported that one-third of its revenues for its game Hacknet
 25 have been from DLC.

26 ⁷⁵ *Id.* § 2.4.

27 ⁷⁶ Statistica, *Share of gamers who purchase downloadable content in the United States in*
 28 *2019* (Mar. 3, 2021), <https://www.statista.com/statistics/274130/purchased-virtual-gaming-items-and-content-in-the-us/>; Statistica, *Average annual spend on downloadable content (DLC) in selected video games in the United States in 2019* (Mar. 3, 2021), <https://www.statista.com/statistics/1104745/video-gaming-dlc-spend-game/>.

- 1 • The studio No More Robots offers a \$20 game and a \$10 story DLC, with between one-fourth and one-third of customers (depending on a non-sale or sale period, respectively) also purchasing the DLC.⁷⁷
- 2

3 178. When the price and availability of games and DLC are uniform throughout the
 4 market (because of Valve's restrictions), publishers cannot incentivize consumers to purchase
 5 games or DLC through a non-Steam method that would provide a more favorable revenue
 6 opportunity to the publisher. Steam is able to preserve its market power, and rivals cannot gain a
 7 foothold in the market by attracting publishers with more favorable distribution terms or
 8 customers with lower prices and exclusive offerings.

9 179. Under the Delivery clause of the SDA, Developers also are unable to offer a new
 10 game, update, or add-on through a third-party store before delivering that application to Steam.
 11 This prohibits Developers from entering exclusive offerings, including short-term exclusives or
 12 early releases, with other storefronts for games, updates, or other add-on content.

13 180. An exclusive occurs when a publisher offers a promotional deal on only one
 14 storefront. The promotional deal can be in terms of a discount, special content, and/or an earlier
 15 release date. The storefront of choice tends to market and promote the exclusive heavily, thereby
 16 generating customer attention and potentially significant revenue for the publisher (and the
 17 storefront trying to build its market presence).

18 181. An exclusive is a common marketing tactic in many industries to attract
 19 customers, because a competitor cannot offer the same product. This may bring customers to the
 20 store and encourage additional purchases beyond the exclusive item. For example, while
 21 Apple's iPhone is now widely available, it was originally available only on AT&T, encouraging
 22 new customers to choose AT&T or Verizon customers to switch carriers.

23 182. The Delivery clause suppresses competition by ensuring Steam has access to the
 24 newest inventory, on its terms, instead of having to negotiate for the newest releases in a

25

26 77 Simon Carless, *The surprising way that paid DLC works*, Gamasutra (July 13, 2020),
 27 [https://www.gamasutra.com/blogs/SimonCarless/20200713/366297/The_surprising_way_](https://www.gamasutra.com/blogs/SimonCarless/20200713/366297/The_surprising_way_that_paid_DLC_works.php)
 28 [that_paid_DLC_works.php](https://www.gamasutra.com/blogs/SimonCarless/20200713/366297/The_surprising_way_that_paid_DLC_works.php).

1 competitive market. Valve insists that it must receive a copy of game updates and localized
 2 versions no later than when they are made available to any other third party for commercial
 3 release. Without Valve's restrictions, exclusives would be more common in the market.

4 183. The Delivery clause reads as follows:

5 Delivery. Company shall submit the Applications to Steam for release no later than
 6 the first commercial release of each Application or Localized Version, or, if already
 7 commercially released as of the Effective Date, within thirty (30 days) of the
 8 Effective Date. Thereafter, Company shall submit to Steam any Localized Versions
 9 and Application Updates (in beta and final form) when available, but in no event
 10 later than they are provided to any other third party for commercial release.
 11 Company shall provide these copies in object code form, in whatever format Valve
 12 reasonably requests.

13 Additionally, for any copies of Applications that use Steamworks, Company shall
 14 include the Steam client with those copies in accordance with instructions provided
 15 by Valve. Company hereby acknowledges that a Steamworks version of the
 16 Application requires a Steamworks Product Key [*i.e.*, Steam key] and that Valve
 17 uses authentication software such that an end user must have a valid Steamworks
 18 Product Key and authenticate such Steamworks Product Key via the Internet to use
 19 the Steamworks version of the Application.⁷⁸

20 184. While Valve has some business interest in ensuring it receives updates to games
 21 hosted on Steam, the operation of this clause, combined with other aspects of the PMFN, far
 22 exceeds any legitimate interest. Requirements for equal pricing and availability throughout the
 23 market do not benefit Steam customers, who are deprived of fair competition and lower prices:
 24 Publishers remain loyal to Steam and competitors cannot take share from Steam.

25 **B. The Valve PMFN Suppresses Price Competition**

26 185. The impact of the Valve PMFN is evident in game prices across platforms. It
 27 would be in the economic self-interest of a publisher to sell its games for lower retail prices
 28 through lower-commission distributors. If another distributor charges a lower commission, the
 29 publisher could lower prices on the rival distributor, steering customers towards the rival
 30 distributor, or compel Valve to lower Valve's own supracompetitive commissions.

27 ⁷⁸ SDA § 11.4.

1 186. In actuality, however, prices are remarkably consistent across stores, regardless of
 2 each distributor's commission. A central reason for this price consistency is that Valve has
 3 enforced the Valve PMFN against publishers that have tried to price lower through other
 4 distributors, even when those publishers are selling games for use on other platforms, like EGS.
 5 For example, the following chart shows prices as gathered from the Steam Store, the Epic Games
 6 Store, and GameStop websites on April 16, 2021.

Game Title	Price on Steam	Price on Epic Games Store	Price on GameStop
Scarlet Hood and the Wicked Wood	\$14.99	\$14.99	N/A
Control	\$29.99	\$29.99	N/A
Doom VFR	\$29.99	N/A	\$29.99
Prev (2017)	\$29.99	N/A	\$29.99
Red Dead Redemption 2	\$ 59.99	\$59.99	\$59.99
Final Fantasy XIV Online: Complete Edition	\$ 59.98	N/A	\$59.99
Disco Elysium	\$39.99	\$39.99	N/A
Outriders	\$59.99	\$59.99	\$59.99
Before Your Eyes	\$9.99	\$9.99	N/A
Biomutant	\$59.99	\$59.99	N/A

1 187. The games on the below list were also offered for the same price on Epic and
 2 Steam, despite the differential in commissions, on January 7, 2021:

Game Title	Price on Steam	Price on Epic Games Store
The Outer Worlds	\$59.99	\$59.99
Borderlands 3	\$59.99	\$59.99
Remnant: From the Ashes	\$39.99	\$39.99
Surviving Mars	\$29.99	\$29.99
Amnesia: Rebirth	\$29.99	\$29.99
Oxygen Not Included	\$24.99	\$24.99

12 188. Pricing games in a uniform manner across stores with different commissions goes
 13 against the economic self-interest of game publishers, who could earn more profit by charging
 14 lower retail prices on lower-commission platforms. The explanation for this continuing behavior
 15 is the Valve PMFN and Valve’s other anticompetitive conduct.

16 189. For example, Epic has its own content delivery network and digital rights
 17 management, and it does not sell Steam keys. Games are hosted and played through its own
 18 system. Epic Games Store offers publishers a higher revenue sharing percentage, allowing them
 19 to keep 88% of the sales revenues. Epic CEO Tim Sweeney explained that Valve’s PMFN still
 20 affects prices on his company’s store, even though Epic does not sell Steam keys, because a
 21 “multi-store developer [that] wishes to sell their game for a lower price on the Epic Games store
 22 than Steam” is not allowed to do so.⁷⁹

23 190. Industry press has also noted that, despite the expected lower prices on Epic
 24 Games Store given the larger percentage of revenue that publishers keep, customers “have seen

25 79 Tim Sweeney, *@TimSweeneyEpic* tweet (Jan. 30, 2019), <https://twitter.com/TimSweeneyEpic/status/1090663312814157824>.

1 the same price tags for games on Epic's storefront as on Steam (when titles are available on
 2 both)."⁸⁰

3 191. Valve's anticompetitive conduct also prevents rival storefronts from increasing
 4 volume on their storefronts by offering lower commission fees—because the PC game must be
 5 priced at the same level to consumers regardless of the commission the game developer pays.
 6 Thus, game developers cannot take advantage of the lower commission levels on other platforms.
 7 The following chart illustrates how the Valve PMFN prevents price competition:

	Steam	Rival Platform
Commission %	30%	12%
Sale \$ to Consumer	\$10.00	\$8.00
Developer Income	\$7.00	\$7.04

12 192. Thus, at a 12% commission, a game developer could lower its price by 20% and
 13 still earn more profit. And, of course, consumers would benefit through lower prices. This
 14 pricing scheme is blocked by Valve's PMFN.

16 193. There are also many real-world examples of game publishers acting in accordance
 17 with the Valve PMFN. Specifically, when publishers increase their prices on the Steam Store,
 18 they also raise their prices on other storefronts:

- 19 • On December 1, 2020, Ubisoft increased the price of its game "Far Cry 4" from \$8.99
 20 (the list price it was selling for on Steam and Epic) to \$29.99 on Steam. Consistent with
 21 the Valve PMFN, two days later, Ubisoft raised the price of Far Cry 4 to \$29.99 on Epic

23
 24 ⁸⁰ Kyle Orland, *Epic CEO: "You're Going to See Lower Prices" on Epic Games Store*, ARS
 25 TECHNICA (Mar. 20, 2019), <https://arstechnica.com/gaming/2019/03/epic-ceo-youre-going-to-see-lower-prices-on-epic-games-store/> ("The Epic Games Store's much-ballyhooed 88-percent revenue share has been great news for developers who are no longer forced to accept Steam's de facto 70-percent standard. But this new behind-the-scenes monetary split hasn't resulted in savings for gamers, who thus far have seen the same price tags for games on Epic's storefront as on Steam (when titles are available on both).").

1 as well. Games sold through the EGS Store are not enabled for Steam and do not use
 2 Steam keys.

- 3 • On March 26, 2020, Ubisoft increased the price of its game “Far Cry New Dawn” from
 4 \$15.99 to \$39.99 on Steam, when Ubisoft’s own storefront, Uplay, sold the game at
 5 \$16.00. Consistent with the Valve PMFN, thirteen days later, Ubisoft increased the price
 6 of this game to \$39.99 on Uplay. Games sold on Uplay are not enabled for Steam and do
 7 not use Steam keys.
- 8 • On January 5, 2021, Ubisoft increased the price of its game “Steep” from \$5.99 to \$29.99
 9 on Steam. Consistent with the Valve PMFN, ten days later, Ubisoft increased the price
 10 on Uplay to \$29.99 as well.
- 11 • On January 5, 2021, Ubisoft increased the price of its game “I Am Alive” from \$3.74 to
 12 \$14.99 on Steam, when the price on Uplay was \$3.75. Consistent with the Valve PMFN,
 13 nine days later, Ubisoft raised the price of “I Am Alive” to \$14.99 on Uplay as well.
- 14 • On January 18, 2021, CD Projekt set the price of its game “The Witcher 3: Wild Hunt” at
 15 \$39.99 on Steam but \$11.99 on GOG. Consistent with the Valve PMFN, seven days
 16 later, CD Projekt increased the price of this game to \$39.99 on GOG. The version of the
 17 Witcher 3: Wild Hunt sold on GOG is not enabled for Steam and does not use Steam
 18 keys.
- 19 • On March 29, 2021, Devolver increased the price of its game “Carrion” from \$13.39 (the
 20 list price it was selling for on Steam and GOG) to \$19.99 on the Steam Store. Consistent
 21 with the Valve PMFN, six days later, Devolver increased the price of this game to \$19.99
 22 on GOG. The version of Carrion sold on GOG is not enabled for Steam and does not use
 23 Steam keys.

24 194. Valve has also threatened publishers that offered lower prices on other platforms,
 25 insisting that customers using the Steam Store should get a similar deal or else Valve may
 26 remove the publisher’s games from Steam altogether. Because of Valve’s pressure tactics,

1 publishers were forced to revise their deals with other storefronts, harming both gamers and the
2 publishers themselves.

3 **C. Valve Enforces the PMFN to Suppress Competition from Rival PC Game
4 Distributors**

5 195. Valve's published interpretations and enforcement of restrictions on publishers
6 makes clear that the Valve PMFN requires pricing parity across stores and forbids exclusive
7 offerings on other stores. Publishers must use their Steam Store price as the price on other
8 distribution outlets. This ensures other distributors cannot meaningfully compete with Steam on
9 price, protecting Valve's dominance.

196. Publishers are reminded of these restrictions whenever they request Steam keys.

2 A copy of the “prompt” screen for publishers requesting keys appears below:

3 Select Type > Select Tag > Select Package > Enter Quantity > Confirmation

4  Key Type: Digital Store

5 When handling keys from digital stores, it is usually best to request a small batch for each store separately. That way you can tag
and track the keys from each retailer to better tell how each digital store is performing and whether those keys are ending up in the
hands of customers.

6 PLEASE CONFIRM YOUR REQUEST

7 Receiver 2 (383818) Appids: 1129310

8 Requesting: 1,000 Tagged as: "Keymailer"

9 Before completing your key request, please review and agree that you understand the following:

10 I understand that I need to sell my game on other stores in a similar way to how I am selling my game on Steam. I agree that I am not giving
Steam customers a worse deal.

11 I understand that while it's OK to run a discount on different stores at different times, I agree to give the same offer to Steam customers within a
reasonable amount of time.

12 I understand that if I request an extreme number of keys and I'm not offering Steam customers a fair deal, or if my sole business is selling Steam
keys and not offering value to Steam customers, my request may be denied and I may lose the privilege to request keys.

13 Valve reserves the right to deny keys or revoke key requesting privileges for partners that are abusing them or disadvantaging Steam customers.

14

15 Please use the box below to tell us more about your intended use of these keys so that we can help make sure you are requesting the right quantity
for your needs.

16 These are intended for streamers on Keymailer.

17 454 of 500 characters remaining

18 Back Submit Request

20

21 197. In order to receive any Steam keys, Valve requires game publishers to affirm their
22 agreement to certain Steam Key Rules. They must agree that “*I understand that I need to sell my*
23 *game on other stores in a similar way to how I am selling my game on Steam*” and that “*I agree*
24 *that I am not giving Steam customers a worse deal.*” The publisher must also agree that “*I*
25 *understand that while it's OK to run a discount on different stores at different times, I agree to*
26 *give the same offer to Steam customers within a reasonable amount of time.*” Again, as

1 discussed above, Valve enforces these rules against publishers not only for Steam key sales, but
 2 for *all* sales, even if an alternative store does not sell Steam keys.

3 198. There are ample examples of Valve explaining and enforcing the PMFN.

4 199. Valve enforced the Valve PMFN, for example, to block competition from the
 5 Discord Store. As detailed below, Discord launched a competitor to the Steam Store that
 6 charged only a 10% commission. As Discord offered a much lower price, some publishers
 7 wanted to steer customers to Discord, where the publisher could charge a lower price to the
 8 customer while growing its own revenue.

9 200. In late 2018, for example, one publisher had been selling its game on the Steam
 10 Store for \$5, but launched its game on the Discord Store (enabled for Discord's gaming
 11 platform) for free. Valve detected that the publisher was charging different prices on the two
 12 storefronts, and told the publisher that offering its game for a lower price on Discord violated the
 13 Valve PMFN. Valve insisted the publisher renegotiate its deal with Discord and ensure that
 14 gamers buying the Discord version pay the same price as gamers buying the Steam version.

15 201. Valve's enforcement of the Valve PMFN harmed Discord, publishers, and
 16 gamers. Discord was unable to use price to grow its share of the market. Publishers were unable
 17 to reap the benefit of Discord's lower commissions. Gamers were denied the ability to purchase
 18 the game for a lower retail price.

19 202. Other publishers have received similar explanations from Valve. One publisher
 20 contacted Steam through the Developer Support tool, as instructed in the Steam Keys Rules for
 21 questions about how "to avoid a situation where customers get a worse offer on the Steam store"
 22 and remain compliant with Steam's rules. The developer asked, "Regarding the pricing policy,
 23 can a non-Steam variant of a game be sold at a different price than on the Steam store page?"

1 Steam's response was "Selling the game off Steam at a lower price wouldn't be considered
 2 giving Steam users a fair deal."⁸¹

3 203. Steamworks Development is a forum where publishers can interact with Valve
 4 employees. On this forum, when one publisher asked Valve about the "rules regarding
 5 distributing/selling a game outside of steam" in a thread called "Patreon and steam keys" dated
 6 July 2, 2017, "TomG" of Valve explained how the policing system works. As he explained,
 7 "*The biggest takeaway is, don't disadvantage Steam customers.* For instance, it wouldn't be fair
 8 to sell your DLC [downloadable content] for \$10 on Steam if you're selling it for \$5 or giving it
 9 as a reward for \$5 donations. We would ask that Steam customers get that lower \$5 price as
 10 well."

11 204. TomG also explained to another game publisher that the publisher should "[t]hink
 12 critically about how your decisions might affect Steam customers, and Valve. If *the offer you're*
 13 *making fundamentally disadvantages someone who bought your game on Steam, it's probably*
 14 *not a great thing for us or our customers (even if you don't find a specific rule describing*
 15 *precisely that scenario).*" In that same thread, TomG responded to a question by stating: "***we***
 16 ***usually choose not to sell games if they're being sold on our store at a price notably higher***
 17 ***than other stores.*** That is, we'd want to get that lower base price as well, *or not sell the game at*
 18 *all.*"

19 205. In response to one inquiry from a game publisher, in another example, Valve
 20 explained: "We basically see any selling of the game on PC, ***Steam key or not,*** as a part of the
 21 same shared PC market- so even if you weren't using Steam keys, ***we'd just choose to stop***
 22 ***selling a game if it was always running discounts of 75% off on one store but 50% off on***
 23 ***ours. . .***"

26 ⁸¹ u/Snarkstopus, *Does Steam have a No Favored Nation Clause*, REDDIT (May 2, 2021),
 27 https://www.reddit.com/r/gamedev/comments/n3k5kw/does_steam_have_a_no_favored_nation_clause/.

1 206. As discussed further below, this “fairness” rationale is pretextual, because if
 2 customers receive lower prices elsewhere, they are better off.

3 207. A Valve employee told another developer that if he “brought a particular other
 4 game of [his] to Steam, it would need to be equivalently priced. This was ***regardless of whether***
 5 ***the non-[S]team version use Steam technology[.]*** [i.e.], a completely standalone version would
 6 have to be the same price as the Steam version.”

7 208. Wolfire has been subject to Valve’s threats to enforce its PMFN. On December 3,
 8 2018, for example, a Steam account manager, Tom Giardino, told Wolfire’s owner that it would
 9 delist any games available for sale at a lower price elsewhere, whether or not using Steam keys.
 10 As a result of Valve’s enforcement of its PMFN, Wolfire has not offered its games for a lower
 11 price than what appears on Steam with other sellers. Had Wolfire been able to discount its
 12 consumer price with other sellers, as discussed below it would have sold more games at a lower
 13 price (and a higher profit) for Wolfire. Valve’s PMFN blocks Wolfire and other developers from
 14 selling their games at the output-maximizing and profit-maximizing price, as dictated by the
 15 economic forces of supply and demand.

16 209. Dark Catt has also been subject to Valve’s enforcement of the PMFN. It offered
 17 its game for a temporary lower price on Humble Bundle than the Steam price and shortly
 18 thereafter was banned from Steam.⁸²

19 210. Valve removes games or publishers as a show of strength to keep publishers
 20 compliant with its overly restrictive pricing and marketing policies and to maintain its dominant
 21 position, despite the cost. Valve trades revenues it would receive from sales of the games it
 22 removes from Steam for acquisition and maintenance of its dominant market position. Valve’s
 23 conduct makes economic sense only through the exclusion of competition.

25 ⁸² The SDA ostensibly gives publishers 30 days to cure any breach of the agreement,
 26 including any pricing discrepancies. But Valve disregards this clause at will and removes
 27 games from the Steam Store without giving publishers the specified time. Valve may also
 refuse to provide an explanation for the alleged breach or the information the publisher needs to
 cure it.

1 211. As discussed further below, the anticompetitive effects of Valve’s PMFN
 2 outweigh any supposed procompetitive benefit (and there are substantially less restrictive ways
 3 to achieve any such benefit). Valve’s PMFN keeps revenue sharing percentages (and potentially
 4 game prices) artificially high and discourages new market entry.

5 **D. Steam Keys Reinforce Valve’s Market Power by Providing Monitoring of
 6 Publishers’ Sales on Other Stores and Enforcement of the MFN**

7 212. As discussed above, Steam keys provide a mechanism for publishers of Steam-
 8 enabled games to market some of their games on non-Steam storefronts. But Valve keeps Steam
 9 key sales limited in scope and imposes anticompetitive restraints on publishers’ ability to offer
 10 their Steam-enabled games for less on competing stores. And because Steam keys permeate the
 11 gaming ecosystem and Valve has the sole ability to generate Steam keys, Valve has made itself
 12 the de facto gatekeeper to the PC gaming ecosystem.

13 213. While nominally “free,” the ubiquity of Steam keys comes at a significant cost to
 14 publishers and the industry as a whole. Valve made a business decision to offer Steam keys to
 15 publishers at no out-of-pocket cost because they allow Valve to control pricing and quantity
 16 throughout the industry and generate revenues for itself in other ways.

17 214. While a given publisher can opt out of taking Steam keys from Steam, it cannot
 18 opt out of the distorted distribution market those keys have created. Availing itself of Steam
 19 keys is a practical necessity for a publisher, one that compels publishers to adhere to Steam’s
 20 distribution terms.

21 215. Providing Steam keys for no upfront monetary fee helps Valve to maintain Steam
 22 as the dominant digital platform for purchasing and playing video games. Publishers and gamers
 23 are locked in to using Steam keys to buy, sell, promote, and play PC games. Publishers must
 24 make their games available on Steam and must have some amount of sales success to get
 25 approval for Steam keys to sell on other stores. Gamers that purchase a Steam key through
 26 another store are taken right back to Steam to redeem the key through their Steam account and
 27 play the game on Steam.

1 216. Steam keys therefore keep publishers and customers in the Steam ecosystem even
 2 when they transact via a Steam key on a third-party store. Gamers have much less incentive to
 3 go to a third-party store if the price is the same as on Steam, the games are the same as on Steam,
 4 and they purchase a Steam key that leads them right back to Steam anyway.

5 217. The Steam key purchasers are still Steam users, and Steam is still able to track
 6 gameplay. This information has value to Steam, including to provide personalized
 7 recommendations to users for additional games to purchase via Steam, monitor trends in
 8 gameplay, and understand purchase patterns and game popularity.

9 218. Valve benefits when a Steam key is purchased on another site, despite not earning
 10 a commission on the initial sales transaction. Valve is able to monitor publishers' compliance
 11 with its anticompetitive restrictions, helping it maintain its lucrative market position. Because
 12 the game is still distributed by and played on Steam, Valve receives a 30% commission for the
 13 customer's subsequent purchases made in the game, and receives a commission for purchases
 14 made on the Steam Workshop or Marketplace. Under the SDA, publishers agree that
 15 "Applications distributed via Steam will not include functionality from or links or references to
 16 any store other than Steam, or any other facility for making purchases or payments."⁸³ That is,
 17 publishers cannot direct customers to any payment processor outside of Steam, guaranteeing
 18 Valve the commission on all purchases.

19 219. Similarly, the Steamworks Documentation states that, "For any in-game
 20 purchases, you'll need to use the microtransaction API so Steam customers can only make
 21 purchases from the Steam Wallet."⁸⁴ In October 2021, Valve also updated the Onboarding
 22 section of the Steamworks Documentation to state that applications that "issue or allow the

23
 24
 25
 26 ⁸³ SDA § 2.5.
 27 ⁸⁴ *Steamworks Documentation, Microtransactions (In-Game Purchases)*,
 28 https://partner.steamgames.com/doc/features/microtransactions (last accessed Dec. 17, 2021).

1 exchange of cryptocurrencies or NFTs” are not allowed, and Valve removed such games from
 2 the store.⁸⁵ All in-game purchases therefore go through Steam and provide revenue to Valve.

3 220. Steam keys also provide Valve a way to monitor sales on other platforms and
 4 limit those sales. Valve’s sole ability to create Steam allow it to control the quantity of Steam-
 5 compatible games sold on third-party stores. Valve imposes an output restraint by granting
 6 Steam keys only in quantities less than a publisher’s sales on Steam.

7 221. Prior to August 2017, Valve allowed publishers to generate keys for their games
 8 without Valve’s oversight.⁸⁶ Valve now grants publishers access to Steam keys at Valve’s
 9 discretion and without defined guidelines. The Steam Key Rules provide that Valve can refuse
 10 or revoke keys to publishers “that are abusing them,” that requested “an extreme number of
 11 keys,” or are “not providing value” to Steam customers. These Rules are intentionally vague to
 12 give Valve broad discretion in administering them to suit its interests.

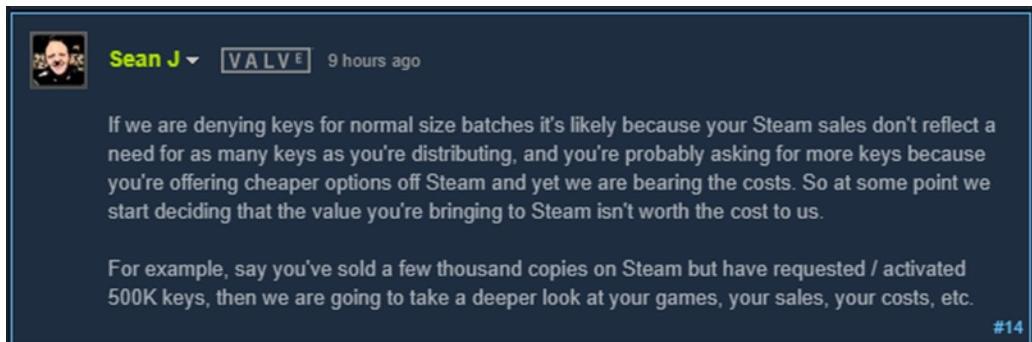
13 222. One rule Valve has implemented is that a publisher will not be granted Steam
 14 keys in a volume that exceeds the game’s actual sales on Steam. A Valve employee who works
 15 with Steam developers posted on Steam’s developer-only board that the company would no
 16 longer automatically fulfill key requests but instead will deny requests for “normal size batches”
 17 if the game’s “Steam sales don’t reflect a need for as many keys as you’re distributing.” He
 18 further noted that these publishers are “probably asking for more keys because you’re offering
 19 cheaper options off Steam,” which Valve does not allow.⁸⁷

20 ⁸⁵ *Steamworks Documentation, Onboarding*, <https://partner.steamgames.com/doc/gettingstarted/onboarding> (last accessed Dec. 17, 2021); Evgeny Obedkov, *Steam to remove all games with NFTs, according to onboarding rules*, GAME WORLD OBSERVER (Oct. 15, 2021), <https://gameworkobserver.com/2021/10/15/steam-to-remove-all-games-with-nfts-according-to-onboarding-rules>.

23 ⁸⁶ Rishi Alwan, *Valve Doesn’t Want You to Buy Steam Games Outside of Steam*, GADGETS 360 (Aug. 18, 2017), <https://gadgets.ndtv.com/games/news/steam-key-developer-restrictions-bundle-valve-1739145>.

25 ⁸⁷ SteamSpy, *@Steam_Spy tweet* (Aug. 17, 2017) https://twitter.com/Steam_Spy/status/898208219675447296 (sharing post by Valve employee Sean Jenkin and noting “Valve will no longer automatically fulfill [sic] key requests from the developers to combat game sales outside of Steam.”); Sherif Saed, *In order to reduce game sales outside of Steam, Valve will no longer automatically fulfil key requests from devs*, VG247 (Aug. 18, 2017),

1 223. A screenshot of the message appears below:



8 224. While Valve claimed this was because it was bearing the cost of allowing Steam
 9 keys to be sold on third-party stores, the costs associated with running a content delivery network
 10 in 2017—the year that Valve changed the policy—were reportedly approximately 0.2 cents
 11 (\$0.002) per gigabyte. This has dropped to a reported 0.07 cents (\$0.0007), or even 0.06 cents
 12 (\$0.0006) for large customers, in 2020.⁸⁸ Valve gains far more value by keeping publishers and
 13 consumers dependent on Steam, and from subsequent purchases through Steam, than any profit
 14 loss on a Steam key sale that might impose fractions of a penny in data costs to Valve for
 15 supporting the download of the purchased game.

16 225. This output control, which has minimal or no procompetitive reason, ensures
 17 Steam will have the highest sales for any individual game, compared to all third-party stores
 18 selling Steam keys. Since most of the rest of the PC game distribution market is selling Steam
 19 keys, Valve ensures it has the highest sales for an individual game compared to its competitors.

20 226. By limiting the inventory of copies available on third-party stores, Valve ensures
 21 Steam remains the dominant PC game distributor and ensures that Valve extracts its
 22 supracompetitive revenue share from most sales of PC games.

24 https://www.vg247.com/in-order-to-reduce-game-sales-outside-of-steam-valve-will-no-longer-
 automatically-fulfil-key-requests-from-devs.

25 88 SteamSpy, *@Steam Spy tweet* (Aug. 17, 2017) https://twitter.com/Steam_Spy/status/
 26 898209620166094850 (linking to a 2017 article from Streaming Media Blog, now updated as
 27 Dan Rayburn, *CDN/Media Pricing See's Big Drop for Largest Customers: Pricing Down to*
\$0.0006, Streaming Media Blog (May 11, 2020),
<https://www.streamingmediablog.com/2020/05/q1-cdn-pricing.html>).

1 227. The need for Steam keys to test, market, promote, and sell a game prevents
 2 publishers from violating the Valve PMFN or acting in any way, in Valve's view, contrary to its
 3 position as gatekeeper to the PC gaming ecosystem.

4 228. For example, Valve views exclusive offerings and temporary sales on other stores
 5 as a threat to its market position in PC game distribution. When publishers enter into exclusives
 6 with another store, or offer a discounted price, Valve may delay approval of or cut off
 7 publishers' access to Steam keys to cripple their sales and ability to run further promotions. It
 8 may also remove them from the Steam store altogether.

9 229. Without Steam keys, publishers cannot offer their games for sale on most rival
 10 stores. They also cannot provide access to larger publishers / investors and media who might
 11 help them gain access to distribution channels not reliant on Steam and Steam keys.

12 230. Valve substantially delayed granting Dark Catt's request for Steam keys it
 13 planned to sell on Humble Bundle at a discounted price. Valve then banned Dark Catt from
 14 Steam. Dark Catt has had multiple requests for Steam keys from interested publishers wanting to
 15 trial its game that it cannot fulfill because Valve, without reasonable explanation and opportunity
 16 to cure, cut off its access and will not authorize Steam keys. Valve has thus been able to cut off
 17 Dark Catt's access to the PC game distribution market more generally due to its market power.

18 231. Indie studio Idalgame had a similar experience. It was accused of using
 19 Steamworks tools to sell bundles to customers, but denied wrongdoing. Idalgame's games were
 20 nonetheless pulled and its access to the Steamworks backend was revoked, preventing it from
 21 accessing its own games, activity, and the Developer Support contact to try to resolve the error.⁸⁹
 22 That is, Idalgame's access to Steam, Steam keys, and its Steam-hosted game was cut off because
 23 it was accused of offering lower pricing elsewhere.

24
 25
 26 ⁸⁹ Nathan Grayson, *Valve Removes 1,000 Games From Steam As Punishment For Abusing Tools*, KOTAKU (Nov. 26, 2019), <https://kotaku.com/valve-removes-1-000-games-from-steam-as-punishment-for-1840054771>.

1 232. Other publishers have been victimized by Valve through its control of Steam keys
 2 for taking action Valve perceived as against its interests. For example:

3 233. Studio Wildcard offered its game Ark: Survival Evolved, originally released in
 4 2017, as a free giveaway for one week in June 2020 on Epic Games Store and participated in
 5 Humble Bundle's end-of-summer sale in 2020. It was temporarily unable to fulfill the orders it
 6 received on Humble Bundle because Valve delayed approving additional Steam keys in
 7 retaliation for the promotions on other sites. That is, Valve delayed approving Steam keys
 8 because Studio Wildcard was temporarily offering a lower price on another store and increasing
 9 its non-Steam sales, even though the game had been available on Steam for years. Ark: Survival
 10 Evolved was removed from the Humble Bundle store because of the supply shortage.⁹⁰

11 234. In an unexplained purge in November 2019, Valve banned approximately 1,000
 12 games from Steam in a single day for allegedly abusing "some Steamworks tools." While some
 13 of these were "fake" games or linked to a fraudulent publisher, the purge also included legitimate
 14 games that had thousands of purchases and reviews. The game Electric Highways, which had
 15 been on Steam since 2015 and had over 1,300 positive reviews, was removed, showing the bans
 16 did not "just impact dodgy developers."⁹¹ Some games were later restored to Steam, a rare
 17 admission of Valve's errors, because they had not broken any of the Steamworks rules.⁹²

18 235. Maintenance of Steam keys as the industry standard helps build and maintain
 19 Valve's market position in PC game distribution by allowing Valve to collect data on publishers'

21 ⁹⁰ Press Release, *Ark: Survival Evolved Available Now For Free on the Epic Game Store*,
 22 STUDIO WILDCARD (June 11, 2020), <https://www.gamasutra.com/view/pressreleases/364606/>;
 23 Steam Community Discussions, ARK: Survival Evolved, *Steam keys for Humble Bundle ARK*
buyers (Sept. 9, 2020), <https://steamcommunity.com/app/346110/discussions/0/2950376844043274493>; Humble Bundle, *Facebook post* (Sept. 22, 2020),
<https://www.facebook.com/humblebundle/posts/keys-for-ark-survival-evolved-have-been-restocked-please-head-to-your-download-p/3441295855913694/>.

25 ⁹¹ Grayson, *supra* note 89.

26 ⁹² McHugh, *1000 games removed from Steam due to Steamworks 'abuse'*, *supra* note 68;
 27 u/thomasthe1st, *Steam is removing hundreds of games from the store atm* REDDIT (Nov. 25,
 2019), https://www.reddit.com/r/Steam/comments/e1obe3/steam_is_removing_hundreds_of_games_from_the/.

1 sales on other stores and keeping publishers compliant with Valve’s restrictive policies to
 2 maintain access to Steam keys, determined at Valve’s discretion. Valve’s control over and use
 3 of Steam keys excludes competition while economically coercing publishers into paying Valve
 4 excessive 30% commissions on nearly every game sale they make.

5 **E. Valve Uses Its Review System to Enforce Its Contractual Restrictions and**
 6 **Discipline Publishers**

7 236. In addition to using Steam keys to control and punish publishers, Valve
 8 encourages and/or allows its users to improperly attack publishers using Steam reviews and
 9 community discussions, and does not timely remove inappropriate reviews, if at all.

10 237. When publishers offer exclusives on other stores, Valve may use social media
 11 channels to notify its followers of the publishers’ action, resulting in an attack on the publisher
 12 on social media or by “review bombing” on the Steam store.

13 238. When the online community learns of an exclusive on another store, they will
 14 quickly begin leaving negative reviews for that game or other games from the same publisher on
 15 Steam, and will do so in volume. The threat of being review-bombed, in violation of Steam’s
 16 terms of use, keeps publishers compliant with Valve’s price parity and marketing restrictions.

17 239. For example, 4A Games and Deep Silver faced review bombing for entering a
 18 temporary exclusive with Epic Games Store for the new release Metro Exodus. Metro Exodus
 19 had been available for pre-sale on Steam before announcing, on or about January 28, 2019, the
 20 one-year exclusive with Epic. The game was \$10 cheaper on Epic Games Store than on the
 21 Steam pre-sale.

22 240. Valve issued a statement criticizing the exclusive, calling the decision “unfair to
 23 Steam customers,” and posted the statement on Metro Exodus’s Steam store page. “This led to a
 24 bunch of negative review spamming on the previous Metro games, Metro 2033 Redux and Metro
 25 Last Light Redux” on Steam.⁹³ Spurred by Valve’s announcement that the decision was “unfair

26 ⁹³ Jake Tucker, *People are review-bombing Metro Exodus, but this time: it’s positive*,
 27 TRUSTED REVIEWS (Feb. 25, 2019), <https://www.trustedreviews.com/news/people-review->

1 to Steam customers,” the “hefty review-bombing” featured reviews mentioning Epic Games
 2 Store rather than negative comments on the games themselves.⁹⁴ The games being review
 3 bombed were not themselves Epic Games Store exclusives. Instead, review bombing was used
 4 to destroy the marketability of the publisher’s back catalogue in retaliation for its perceived
 5 disloyalty to Steam.

6 241. Metro Exodus would be available on Steam after the exclusivity period. Pre-sales
 7 of the game would be honored through Steam, the content would be the same, and future updates
 8 and free or premium DLC would be released simultaneously for both the Epic and Steam
 9 versions.⁹⁵

10 242. Notably, Metro Exodus is a single-player game, rather than an online multiplayer
 11 game. While a Steam user’s experience of a multiplayer game could potentially be impacted if
 12 some players moved to the EGS rather than Steam, assuming gamers could not play with those
 13 on the other platform, there is no similar consequence to a single-player game’s user base being
 14 spread out. There is only harm to Valve’s market position.

15 243. Similarly, on or about April 3, 2019, game studio Gearbox announced its highly
 16 anticipated new game Borderlands 3 would be an Epic Games Store exclusive, a decision made
 17 by publisher 2K/Take Two, not Gearbox. The launch date was September 13, 2019, and the
 18 game would be available on other digital storefronts in April 2020. Thousands of fans
 19 immediately went on Steam to review bomb the currently available Gearbox games, including
 20 Borderlands 2, in protest, specifically mentioning Epic Games. Again, users were giving
 21 negative ratings to Gearbox’s back catalogue based on an entirely different game being an Epic
 22

23 bombing-metro-exodus-time-positive-3664757.

24 ⁹⁴ Ali Jones, *Metro games are getting review-bombed on Steam*, PCGAMESN (Jan. 30,
 25 2019), www.pcgamesn.com/metro-exodus/metro-2033-last-light-review-bomb.

26 ⁹⁵ Andy Chalk, *Players protest Epic’s Metro Exodus exclusive by review-bombing the*
 27 *series on Steam*, PC GAMER (Jan. 30, 2019), <https://www.pcgamer.com/metro-review-bomb-steam/>; Michael McWhertor, *Valve calls exclusive Metro Exodus deal with Epic ‘unfair’ to Steam customers*, POLYGON (Jan. 28, 2019), <https://www.polygon.com/2019/1/28/18201004/valve-metro-exodus-epic-games-store>.

1 Games Store temporary exclusive. Even though this had nothing to do with the prior games’
 2 merits or demerits, Valve refused to remove the false reviews.⁹⁶

3 244. Gamers also went to other sites to complain, with one user starting a petition on
 4 the “r/gaming” online Reddit community—a group with over 30 million members. That user
 5 argued, “We can’t just let Epic Games keep buying out exclusives to their [expletive] launcher.
 6 This is very anti consumer and it is literally epic paying millions to 2k [Borderlands 3’s
 7 publisher] just to [expletive] over us the buyers. I really suggest everyone on pc to boycott the
 8 game until it releases on steam so Epic does not get any of our money.”⁹⁷ Though Valve cannot
 9 control posts on Reddit, the vitriol shows what publishers can face for any action seen as
 10 disadvantaging Valve and its entrenched user base.

11 245. The same happened to Ys Net after announcing that the third installment in its
 12 popular series, Shenmue 3, would be a timed exclusive on Epic Games Store and not available
 13 on Steam until after the year-long exclusivity period. Ys Net had raised funds to develop
 14 Shenmue 3 on Kickstarter, showing the need for upfront funding such as that provided by Epic
 15 for the one-year exclusive. Angry Steam users review bombed predecessors Shenmue 1 and 2 in
 16 retaliation for the Epic Games Store exclusive.⁹⁸ Shenmue 3 was one of the most-successful-
 17 ever crowdfunded games and part of a revered franchise, but still faced a catastrophe for its
 18 entire franchise as a result of selling through Steam’s largest competitor; other publishers cannot
 19

20 ⁹⁶ Austin Wood, *Randy Pitchford on Steam review bombing: “makes me kind of happy”*
 21 *Borderlands 3 PC is an Epic exclusive*, GAMESRADAR (Apr. 9, 2019),
 22 <https://www.gamesradar.com/randy-pitchford-on-steam-review-bombing-makes-me-kind-of-happy-borderlands-3-pc-is-an-epic-exclusive/>.

23 ⁹⁷ u/Mattmo831, *Can we please boycott Borderlands 3 and the Epic Games Store*, REDDIT
 24 (Apr. 3, 2019, 6:14 PM), https://www.reddit.com/r/gaming/comments/b8xswj/can_we_please_boycott_borderlands_3_and_the_epic/.

25 ⁹⁸ Robert Purchese, *Clarification amid backlash: Shenmue 3 will come to Steam*,
 26 EUROGAMER (June 11, 2019), <https://www.eurogamer.net/articles/2019-06-11-clarification-amid-backlash-shenmue-3-will-come-to-steam>; Nick Statt, *Epic Games will cover refunds of Shenmue III to protect developer after backlash*, THE VERGE (July 2, 2019),
 27 <https://www.theverge.com/2019/7/2/20680121/epic-game-store-shenmue-3-kickstarter-refunds-policy-controversy>.

1 hope to stand up to Valve to seek more procompetitive terms for access to the PC game
 2 distribution market.

3 246. Review bombing can cause a game's Steam score, or average user rating, to
 4 plummet. For example, Metro 2033 dropped from an 89% positive review to 46%, and Metro
 5 Last Light dropped from 90% to 43% during the review bombing related to the Metro Exodus
 6 temporary exclusive.⁹⁹ Reviews on Steam are important for future sales of a game and the
 7 promotion the game receives on Steam. If subject to review bombing, the game likely will not
 8 be featured on the Steam store homepage, which includes recommendations from friends,
 9 curators, and the Steam community, plus trending and popular categories, or included in specific
 10 recommendations and discovery queues to customers because those algorithms rely on
 11 aggregated Steam scores. It may become less prominent in search results.

12 247. This results in fewer sales and lower revenue for the publisher because the game
 13 will not surface to new potential purchasers. Given that Steam offers over 50,000 games, a
 14 mechanism for discovery can be critical to drive sales for a lesser known game.

15 248. Valve also uses the review system to encourage customers to purchase through
 16 Steam only. Although a game may be purchased through numerous authorized outlets, only
 17 reviews from users who purchased on Steam contribute to the Steam score that is used in the
 18 game store algorithms. That is, reviews from users who care less about the store from which
 19 they purchase and therefore are less likely to be outraged by an exclusivity deal, but who have
 20 legitimately purchased a game through a Steam key and played the game on Steam using a valid
 21 account, do not count for purposes of the Steam score algorithms.

22 249. Counting only reviews by customers who purchased on Steam also encourages
 23 publishers to promote direct sales on Steam rather than sales of Steam keys. The aggregated
 24 Steam score takes into account not just the percentage of positive reviews, but also the total
 25 number of reviews. A game cannot reach the highest tier if it has less than 500 reviews, even if
 26

27 ⁹⁹ Jones, *Metro games are getting review-bombed on Steam*, *supra* note 94.
 28

1 all of them are positive. Similarly, a game with a lower percentage of positive reviews but
 2 higher overall quantity may be ranked in the same tier as a game with the reverse pattern—a
 3 higher percentage of positive reviews but fewer total reviews. Publishers therefore receive
 4 greater benefit from sales and user engagement on Steam rather than independent brand-building
 5 activities or Steam key sales; this dynamic is a direct result of Valve’s conduct to build and
 6 reinforce its market position.

7 250. A game’s Steam score can be crucial to its visibility on Steam and generation of
 8 future sales. These sales then trigger additional reviews that will cause Steam’s algorithm to
 9 give the game better visibility, further improving its total sales. If a publisher sells more Steam
 10 keys, meaning the customer reviews do not count for the aggregate Steam score and game store
 11 algorithms, the publisher loses out on this virtuous cycle of more sales and better store
 12 placement. Publishers have incentives created by Steam’s review system and algorithm to have
 13 their customers purchase through Steam, meaning the publisher will pay Valve the
 14 supracompetitive commission rate on those sales and publishers and customers will remain
 15 locked into the Steam ecosystem.

16 251. As a practical matter, gamers principally rely on Steam and Metacritic ratings
 17 when evaluating games. Other PC gaming stores import Steam reviews rather than using their
 18 own review system, further spreading the impact of review bombing on Steam and impairing
 19 publishers’ ability to survive in the marketplace.

20 252. Valve has a policy of not deleting reviews, even when clearly irrelevant to the
 21 game itself and abusive, and in violation of the terms of use of the system. In 2019, it
 22 implemented a new process to use “tools and developer feedback to identify anomalous review
 23 activity”; internally “dig into what happened”; and “discuss whether the review activity should
 24 be marked ‘off-topic.’”¹⁰⁰ Valve has full discretion to even undertake a review and then make a
 25 unilateral, uncontestable decision to mark review bombs as “off-topic.”

26
 27 ¹⁰⁰ Valve Corporation, *Steam – 2019 Year in Review* (Feb. 5, 2020),
 https://steamcommunity.com/groups/steamworks/announcements/detail/1697229969000435735.
 28

1 253. Reviews marked “off-topic” will not count for the Steam score by default, but
 2 users can change this setting to include “off-topic” reviews in the Steam scores they see and that
 3 generate their recommendations. Regardless, the reviews remain on the game or publisher page.

4 254. Consequently, bad reviews, without any connection to the quality of a game but
 5 instead employed as punishment for “disloyalty” to Steam, can bury a game on the Steam store
 6 and permanently cripple a publisher’s sales, even in the rare instances where Valve will review
 7 and mark them as off-topic.

8 255. Though these reviews are not posted by Valve itself, it refuses to remove the
 9 reviews although they violate its rules and guidelines, including rules requiring reviews to be
 10 relevant and constructive and rules against harassment, abusive language, and swearing.¹⁰¹

11 256. Publishers have gotten the message. For example, Unfold Games, Wlad
 12 Marhulets’ one-person development studio, was preparing to launch its first game, Darq. The
 13 game had been listed on Steam for some time and generated a lot of interest. Mr. Marhulets
 14 refused an offer from Epic Games Store to enter a one-year timed exclusive deal that included an
 15 upfront payment and minimum revenue guarantee. This offer occurred around the time that
 16 another two-person studio had announced its timed exclusive with Epic to great backlash,
 17 including death threats, and Mr. Marhulets received many inquiries about whether he would
 18 enter a similar deal. He made a public statement that he had refused the Epic exclusive, although
 19 recognizing that he probably would have made more money on Epic. He explained that he had
 20 already announced the game would be available on Steam on a specific date and did not want to
 21 upset customers.¹⁰²

22 257. Though the use of the review system as alleged in this Complaint may not appear
 23 wrongful if viewed in isolation and without considering Valve’s market power, Valve’s use of its

24 ¹⁰¹ Valve Corporation, *Rules and Guidelines For Steam: Discussions, Reviews, and User*
 25 *Generated Content*, https://support.steampowered.com/kb_article.php?ref=4045-USJH-3810
 (last accessed Dec. 17, 2021).

26 ¹⁰² Unfold Games, *Why I turned down exclusivity deal from the Epic Games Store* (Aug. 17,
 27 2019), <https://medium.com/@unfoldgames/why-i-turned-down-exclusivity-deal-from-the-epic-store-developer-of-darq-7ee834ed0ac7>.

1 review system reinforces and magnifies its market power by helping Valve control publishers as
 2 part of Valve's overall anticompetitive scheme described above.

3 **V. ANTICOMPETITIVE EFFECTS**

4 258. In a competitive market, Valve would have to compete with other storefronts on
 5 price, revenue sharing rates, promotional activity, and/or other benefits for publishers. Instead,
 6 Valve imposes unlawful contract restrictions and other restraints to block competition to the
 7 detriment of publishers, PC gaming customers, and rival stores. Valve is able to collect a
 8 commission percentage greater than the rate it would be able to charge if it had not foreclosed
 9 competitors, injuring Plaintiffs. The only meaningful way for publishers to avoid Valve's
 10 anticompetitive scheme is to avoid using Steam at all. Unfortunately, however, there are no
 11 economically viable alternatives to Steam, and publishers therefore largely view Steam as a
 12 must-have.

13 259. That is not for lack of trying. Many sophisticated and well-established
 14 companies, including technology giants and leading game publishers, have tried to create
 15 alternative platforms to rival Steam. But by forcing gamers to use Steam to play its popular
 16 Half-Life 2 game in the mid-2000s, Valve secured a massive incumbency advantage in the
 17 market for PC game distribution that is virtually impossible to overcome given the
 18 anticompetitive restraints that Valve utilizes to protect its market power.

19 260. The failure of these rivals is not because Valve's product is high quality and
 20 reflective of consumer choice. As explained herein, all of them attempted to compete against
 21 Valve—in a period in which it continuously held (and still holds) market power over the
 22 market—with platforms that offered equivalent or better functionality and features, while
 23 charging a lower commission. But that competition on quality and price did *not* lead to an uptick
 24 in market share nor a reduction in Valve's commission, as economics would predict—these
 25 rivals were thwarted by Valve's anticompetitive practices described in this complaint.

26 261. Any potential competitor to Steam in the PC game distribution market needs to
 27 overcome Steam's immense network effects caused by extensive game libraries already

1 purchased by players, the social networking features on Steam, the achievement system
 2 embedded into Steam, and the game modification (“modding”) community that exists on Steam.
 3 Rivals would need to convince gamers and publishers to abandon all of these features and the
 4 benefits of the world’s largest PC gaming community to leave Steam and instead join them.
 5 When those advantages are combined with Valve’s illegal conduct, it is virtually impossible for a
 6 rival to create a commercially viable competitor to Steam.

7 262. Well-established companies with strong financial backing, such as EA, Microsoft,
 8 and Amazon, have put substantial time and effort into trying to dent Steam’s dominance. They
 9 were unable, however, to meaningfully compete because of Valve’s anticompetitive actions
 10 described herein. Valve’s PMFN blocked them from competing on price. Even though many of
 11 these would-be rivals attempted to undercut Valve’s commissions in an attempt to draw
 12 meaningful numbers of consumers to their offerings, they could not steer customers to their rival
 13 platforms with lower prices because of Valve’s PMFN.

14 263. By deploying the Valve PMFN, Valve can ensure that the retail prices set in the
 15 Steam Store are equal to or better than the prices offered in any rival distributor’s storefront.
 16 Thus, the Valve PMFN gives Valve the ability to prevent price competition from rival
 17 storefronts.

18 264. Platform MFNs disincentivize sellers (here, publishers) from offering low prices
 19 in any channel, because discounts must be offered to all buyers.¹⁰³ Platform MFNs also create
 20 artificial barriers to market entry:

21 [S]uppose an entrant wishes to gain customers by charging a lower price (perhaps
 22 because it has no established brand name or installed base). It can profitably sell at a low
 23 price by undertaking selective contracting with suppliers willing to offer a discount in
 24 exchange for more volume or other favorable terms. If those suppliers also supply the
 25 incumbent, however, an MFN imposed by the incumbent would require the supplier to
 26 charge the same price to the entrant. This parity undermines the entrant’s business model
 27 by preventing it from making an attractive offer to customers. The symmetry that MFNs
 28 impose on the marketplace thus can prevent new competition that would lower prices.¹⁰⁴

¹⁰³ Jonathan B. Baker & Fiona Scott Morton, *Antitrust Enforcement Against Platform MFNs*, 127 Yale L.J. 2176, 2179 (May 2018) (“Baker I”).

¹⁰⁴ *Id.* at 2180.

1 265. When a company imposes a PMFN prohibiting lower prices on other platforms,
 2 that provision “serves to suppress competition on the crucial dimension of price[,]” and keeps
 3 new entrants from undercutting the dominant platform’s commission, and, but for the PMFN,
 4 driving consumers to the rival platform.¹⁰⁵

5 266. “Platform MFNs with greater scope and duration would be expected to have
 6 stronger anticompetitive effects.”¹⁰⁶ Because of the vast number of game developers selling
 7 through the Steam Store, and who are therefore subject to the Valve PMFN, discount platforms
 8 are unable to compete. Game developers are unwilling to price at a lower level, because they
 9 must do so across all platforms, and therefore gain no price benefit for themselves from lower-
 10 commission storefronts.¹⁰⁷

11 267. Economic modeling demonstrates that when a dominant platform requires its
 12 sellers to agree to a PMFN, (a) there are higher platform fees; (b) there are higher retail prices;
 13 and (c) firms with lower-cost models are discouraged from entry.¹⁰⁸

14 268. As shown in the Boik & Courts model, for example, a lower price entrant (such as
 15 Discord, discussed herein) cannot successfully enter because the PMFN does not allow the
 16 entrant to lower prices to attract both sellers and consumers.¹⁰⁹

17 269. Additionally, MFNs “tend to raise industry prices” because they “kill a retailer’s
 18 incentives to compete in the terms of trade that it offers suppliers. The reason is that a retailer
 19 who raises the commission it charges . . . knows that the price set through its store will not

21 ¹⁰⁵ Benjamin Edelman & Julian Wright, *Price Restrictions in Multi-sided Platforms: Practices and Responses*, 10 COMPETITION POL’Y INT’L 86 (Jan. 30, 2015).

22 ¹⁰⁶ Baker I at 2182.

23 ¹⁰⁷ *Id.*

24 ¹⁰⁸ Andre Boik & Kenneth S. Corts, *The Effects of Platform Most-Favored-Nation Clauses on Competition and Entry*, 59 J.L. & ECON. 105, 113–29 (Feb. 2016).

25 ¹⁰⁹ See also, e.g., Amelia Fletcher & Morten Hviid, *Broad Retail Price MFN Clauses: Are They RPM “At Its Worst”?*, 81 Antitrust L.J. 1, 74 (2016) (“[MFNs] can restrict entry at the retail level. Specifically, they can disadvantage potential retail competitors with low-end business models by eliminating such an entrant’s ability to win customers away from the incumbent through cutting its own margin and offering lower prices.”).

1 increase relative to that at other stores. . . . This means that suppliers cannot asymmetrically
 2 adjust their prices to divert demand towards retailers offering more attractive contractual
 3 terms.”¹¹⁰

4 270. MFNs thus “harm competition by assisting an incumbent in foreclosing the entry
 5 or expansion of rivals.”¹¹¹ MFNs harm competition “by making it impossible for a dominant
 6 incumbent firm’s rivals, including entrants, to bargain . . . for a low price.”¹¹²

7 271. Real world examples show that, when MFNs are banned, prices to consumers fall.
 8 The leading hotel-booking site in the EU responded to an MFN ban by introducing quality
 9 improvements to the service it provided, suggesting online platform competition increased when
 10 Platform MFNs were banned. Other studies have found that consumer prices decrease following
 11 the removal of Platform MFNs.¹¹³

12 272. As detailed above, Valve’s PMFN (a) raises prices to consumers, (b) prevents
 13 rival platforms from competing on price, (c) discourages new entry by a low-commission-
 14 charging platform, and (d) suppresses output by game developers (including Wolfire).

15 273. The failure of well-resourced companies to meaningfully compete against Steam
 16 shows it is virtually impossible as an economic matter to do so. Steam has well-cemented
 17 dominance in the PC game distribution market, and given its unique and strong network effects,
 18 that is unlikely to change. These advantages are reinforced by Valve’s anticompetitive conduct
 19

20 ¹¹⁰ Justin P. Johnson, *The Agency Model and MFN Clauses*, REV. ECON. STUD., 1153–54
 (Jan. 2017).

21 ¹¹¹ Jonathan B. Baker & Judith A. Chevalier, *The Competitive Consequences of Most-
 22 Favored-Nation Provisions*, 27 ANTITRUST MAG. 24 (Spring 2013) (“Baker II”).

23 ¹¹² *Id.*

24 ¹¹³ Yu Song, *Price Parity Clauses and Product Prices: Evidence from Amazon and eBay*
 (2021), available at [http://questromworld.bu.edu/platformstrategy/files/2021/07/Price-Parity-
 26 Clauses-and-Product-Prices.pdf](http://questromworld.bu.edu/platformstrategy/files/2021/07/Price-Parity-

 25 Clauses-and-Product-Prices.pdf); Matthias Hunold, Reinhold Kesler, Ulrich Laitenberger &
 27 Frank Schlätter, *Evaluation of Best Price Clauses in Online Hotel Bookings*, 62 INT’L J. INDUS.
 ORG. 542 (2018); Sean Ennis, Marc Ivaldi & Vicente Lagos, *Price Parity Clauses for Hotel
 Room Booking: Empirical Evidence from Regulatory Change*, CTR. FOR ECON. POL’Y RES. D.P.
 14771 (2020); Andrea Mantovani, Claudio Piga & Carlo Reggiani, *Online Platform Price
 Parity Clauses: Evidence from the EU Booking.com case*, 131 EUR. ECON. REV. 103625
 (2021).

1 discussed above, as Valve retaliates against game publishers and other platforms that try to
 2 introduce competition, thus preventing any meaningful competition that would lead to lower
 3 commissions in the Steam Store.

4 274. Valve's enforcement of the PMFN prevents publishers from discounting on
 5 rivals' platforms, blocking competition for consumers that could put downward pressure on
 6 Valve's supracompetitive 30% commission to publishers and preventing new entrants from
 7 achieving the scale necessary to meaningfully challenge Valve's dominance.

8 **A. As a Result of Valve's Conduct, Valve's Commissions Imposed on Publishers
 9 Are Inflated and Supracompetitive**

10 **1. The Commission Rate Is Not Related to Valve's Costs or the Benefit
 11 Steam Provides**

12 275. Valve's 30% commission charged on most sales is above the rate that would
 13 prevail but for its anticompetitive conduct. Valve originally set its commission rate based on the
 14 rate charged decades ago by large media companies for physical distribution of media such as
 15 VHS tapes through brick-and-mortar retailers.¹¹⁴ As a digital distributor, Steam does not incur
 16 the associated costs of physical distribution like printing of tapes or disks and product packaging,
 17 shipping, real estate, and sales employees.

18 276. Economics instructs that supracompetitive prices are those that are priced
 19 substantially above marginal cost.¹¹⁵ Physical retailers maintained a roughly 30% commission at
 20 the time Valve launched Steam, because that commission reflected the substantial costs that
 21 brick-and-mortar retailers must bear, including the significant costs of real estate. But the cost
 22 structures of a physical brick-and-mortar retailer and a digital retailer are vastly different. Valve

23 ¹¹⁴ See, e.g., Kyle Orland, *Paradox exec: Steam's 30% fee is "outrageous,"* ARS TECHNICA
 24 (July 1, 2019), <https://arstechnica.com/gaming/2019/07/paradox-exec-steams-30-percent-fee-is-outrageous/>.

25 ¹¹⁵ See DENNIS W. CARLTON & JEFFREY M. PERLOFF, MODERN INDUSTRIAL ORGANIZATION
 26 137 (2d ed. 1994) ("Whenever a firm can influence the price it receives for its product, the firm
 27 is said to have *monopoly power* (sometimes called *market power*). The terms *monopoly power*
 28 and *market power* are used interchangeably to mean the ability to profitably set price above
 competitive levels (marginal cost)").

1 was not a physical retailer that had meaningful real estate, personnel, or inventory costs. Its
 2 variable costs of digital distribution were and are near \$0. That means that the 30% commission
 3 it charged at the time, and now, is nearly pure profit. In a competitive market, absent Valve's
 4 restraints, economics provides that the commissions charged after the advent of digital
 5 distribution would decrease to reflect the far lower costs of that distribution format.

6 277. The fact that physical retailers charged 30% and Valve did the same thus does not
 7 indicate Valve's 30% commission was a competitive rate, much less that it remains one today.
 8 The economically correct inference is that Valve's ability to capture the cost differences between
 9 brick-and-mortar retail and digital retail as profit should have been a transitory, temporary
 10 economic profit that should dissipate over time in a well-functioning competitive market.
 11 Examples of this phenomenon abound.

12 278. Consider, for example, the introduction of generic pharmaceuticals. In the United
 13 States, the first generic entrant that successfully files a substantially complete ANDA
 14 ("abbreviated new drug application") with the FDA gains legal exclusivity to sell generics (a
 15 monopoly) for six months.¹¹⁶ The so-called "initial generic monopolist" often is able to set prices
 16 at 20%-30% higher than long-run marginal costs, but prices "steadily decline with an increase in
 17 the number of producers."¹¹⁷ Thus while the first-mover is able to enjoy an initial artificial
 18 advantage conferred by statute, when competition comes on the scene, prices come down.

19 279. More generally, one paper discussing this phenomenon explains that a "typical
 20 pattern" for a new industry/product is "to have an initial phase in which a small number of firms
 21 each earn significant profits, followed by a phase in which rapid entry of new firms leads to
 22 increased competition and dissipation of some of those profits."¹¹⁸ Another paper explains a
 23

24 ¹¹⁶ Zachary Brennan, *180-Day Exclusivity for Generics: FDA Releases Draft Guidance*,
 25 RAPS (Jan. 12, 2017), <https://www.raps.org/regulatory-focus%20&news-articles/2017/1/180-day-exclusivity-for-generics-fda-releases-draft-guidance>.

26 ¹¹⁷ David Reiffen & Michael R. Ward, *Generic Drug Industry Dynamics*, 87 REV. ECON. &
 27 STAT. 37 (2005).

28 ¹¹⁸ *Id.*

1 typical economic pattern is for “a young industry” to be populated “by a few small firms” that
 2 command “a high price.”¹¹⁹ But eventually “entry then expands the number of firms and each
 3 produces more, the combined effect being to raise output dramatically and lower price.”¹²⁰

4 280. Valve has denied publishers these economic benefits. Through its anticompetitive
 5 conduct, Valve has blocked the following “phase in which rapid entry of new firms leads to
 6 increased competition and dissipation of some of those profits.” As discussed below, while
 7 many digital competitors have tried to enter the market, Valve has blocked meaningful
 8 competition, and maintained its very high prices and profits, to the detriment of game publishers
 9 and consumers.

10 281. Basic economics and real-world experience hold that, in a competitive market
 11 after this first-mover period, the entry of other rivals with an electronic distribution model like
 12 the Steam Store would have quickly forced Valve’s commission levels down to competitive
 13 levels by competing on price (*i.e.*, by charging lower commissions). Indeed, in this later period,
 14 that is exactly what multiple rivals tried to do. But they failed because Valve blocked them from
 15 truly competing on price through the anticompetitive conduct detailed herein. This was so even
 16 while the costs of distribution continued to decrease. Thus, Valve’s 30% commission does not
 17 reflect market realities today nor the cost structures of digital distribution, and has never been
 18 free of Valve’s substantial market power. And, because of the restraints detailed herein, Valve
 19 has been able to perpetuate this 30% commission rate that arose to cover substantial brick-and-
 20 mortar distribution costs that are long since a thing of the past.

21 282. While Valve certainly incurs costs to maintain Steam, including payment
 22 processing, content delivery, and programming, these costs bear no relationship to the
 23 commission percentage it charges on every game sale—a percentage of the price set by the
 24 publisher, after returns, taxes, and other adjustments—regardless of the complexity of the game,

25
 26 ¹¹⁹ Jovanovic & MacDonald, *The Life Cycle of a Competitive Industry*, 102 J. POL. ECON.
 322 (1994).

27 ¹²⁰ *Id.*
 28

1 number of Steamworks features integrated, or amount of bandwidth consumed by the purchaser
 2 to download the game. The commission percentage is the same regardless of the underlying
 3 game price or demands on Steam's infrastructure, showing it is not linked to Steam's costs.

4 283. The commission percentage is similarly not linked to the value of Steam to the
 5 publisher. Except for the relatively few highest revenue generating games, the commission
 6 percentage is 30% regardless of the number of Steamworks features the publisher integrates or
 7 its use of other features that Steam promotes, such as community discussion boards or Steam
 8 Workshop. The actual dollar amount the publisher pays to Valve is a function of the publisher's
 9 price, returns, taxes, and other adjustments. The dollar amount the publisher pays Valve may not
 10 be flat over time, despite the flat commission rate, if the publisher decreases the price over the
 11 lifecycle of the game or participates in one of Steam's sales events, as examples.

12 284. Valve is able to charge this commission that far exceeds the costs of providing the
 13 service plus a competitive return because of its pricing and marketing restrictions and other
 14 conduct described herein. Competition forces prices towards a firm's marginal costs. Valve
 15 does not face such pressure. Through the wrongful actions alleged in this Complaint, it has cut
 16 off competitive pressures that would have forced it to lower the commission rate. It maintains
 17 this high commission rate through its durable market power rather than superiority of its product.

18 285. For example, when Discord launched its store in 2018, it wrote, "Turns out, it
 19 does not cost 30% to distribute games in 2018. After doing some research, we discovered that
 20 we can build amazing developer tools, run them, and give developers the majority of the revenue
 21 share." It charged a 10% commission and indicated that it would explore lowering the rate in the
 22 future "by optimizing our tech and making things more efficient."¹²¹

23 286. Given the threat posed by this emerging competitor's lower commission rate,
 24 Valve contacted publishers who released their games on Discord to enforce the pricing
 25 restrictions. Valve made sure publishers could not take advantage of Discord's lower revenue

26
 27 ¹²¹ Discord, *Why not 90/10?* (Dec. 14, 2018), <https://blog.discord.com/why-not-90-10-3761ebef4eab>.

1 share by lowering retail prices to attract purchasers away from Steam. Discord, which began as a
 2 communications site, also had the social networking tools to rival Steam, so Valve replicated
 3 social features from Discord. Valve prevented the Discord store from growing to a sufficient
 4 size to put downward pressure on its revenue share percentage, and ultimately the Discord store
 5 went out of business.

6 287. Epic explained in a court filing that it chose its 12% revenue share percentage for
 7 Epic Games Store after studying its own costs and revenues and the shares of competing
 8 distributors of PC games. It concluded 12% was “sufficient to cover its costs of distribution and
 9 allow for further innovation and investment in EGS.”¹²² EGS was “not yet profitable at its
 10 current scale and stage of development because it has front-loaded its marketing and user
 11 acquisition costs to gain market share.”¹²³ Steam is much further along in its development and
 12 should be experiencing greater economies of scale for its digital infrastructure as well as lower
 13 user acquisition costs given its dominance.

14 288. The New York Times reported in 2020 that according to Epic, “it takes 12 percent
 15 of sales [on Epic Games Store] — and still makes a profit of 5 percent to 7 percent.”¹²⁴

16 289. Epic CEO Tim Sweeney further explained EGS’s costs and how the costs allow it
 17 to charge a significantly lower revenue share than Steam while still making a profit. To run the
 18 digital store, “we pay around 2.5 per cent to 3.5 per cent for payment processing for major
 19 payment methods, less than 1.5 per cent for CDN costs (assuming all games are updated as often
 20 as Fortnite), and between 1 and 2 per cent for variable operating and customer support costs.”
 21 Moreover, “[f]ixed costs of developing and supporting the platform become negligible at a large

23 ¹²² Findings of Fact and Conclusions of Law Proposed by Epic Games, Inc., *Epic Games, Inc. v. Apple, Inc.*, 4:20-cv-05640-YGR (N.D. Cal. Apr. 7, 2021), ECF No. 407 ¶ 399 (citing deposition testimony of CEO Tim Sweeney, VP & GM of Store Steve Allison, and Head of Business Development for Store Joe Kreiner).

24 ¹²³ *Id.* ¶ 405a.

25 ¹²⁴ Jack Nicas, *How Apple’s 30% App Store Cut Became a Boon and a Headache*, N.Y. TIMES (Aug. 14, 2020), <https://www.nytimes.com/2020/08/14/technology/apple-app-store-epic-games-fortnite.html>.

1 scale. In our analysis, stores charging 30 per cent are marking up their costs by 300 to 400 per
 2 cent.” Mr. Sweeney concluded that, with “Epic receiving 12 per cent, this store will still be a
 3 profitable business for us.”¹²⁵

4 290. Ubisoft, which runs its own store that is not reliant on Steam keys, has also stated
 5 that Valve’s 30% commission is too high. Chris Early, VP for partnerships and revenue, told the
 6 New York Times, “It’s unrealistic, the current business model they have. It doesn’t reflect where
 7 the world is today in terms of game distribution.”¹²⁶ Ubisoft stopped releasing some of its games
 8 on Steam in favor of its own store Uplay and Epic Games Store, where the revenue split is 88/12
 9 instead of Steam’s 70/30. But, like EA, it has not been able to fully pull its games from Steam
 10 due to Steam’s control of the PC gaming ecosystem.

11 291. Valve has not invested in improving Steam as it would need to do if it had not
 12 foreclosed its would-be competitors. Valve does not need to introduce the innovative features or
 13 address the concerns of publishers and customers, including rampant hate speech, harassment,
 14 and review bombing, that it would need to do to remain competitive in the market but-for its
 15 dominant market position.

16 292. Valve has also failed to address basic cybersecurity issues that leave its users and
 17 publishers vulnerable to hacking, identity theft, fraud, and money-laundering schemes. It would
 18 have to address these issues if it did not use its PMFN and retaliatory conduct to foreclose
 19 competition.

20 293. With Valve’s PMFN and control of Steam keys, publishers simply have nowhere
 21 else to go to adequately participate in the market, despite Steam’s many shortcomings.
 22
 23

24 ¹²⁵ Seth Barton, *New Epic Games Store takes on Steam with just 12% revenue share – Tim*
Sweeney answers our questions, MCV/DEVELOP (Dec. 4, 2018),
<https://www.mcvuk.com/development-news/new-epic-games-store-takes-on-steam-with-just-12-revenue-share-tim-sweeney-answers-our-questions/>.

25 ¹²⁶ Jason M. Bailey, *Fortnite Maker Wants to Sell More Games, and Build a Platform to*
Do It, N.Y. TIMES (Aug. 27, 2019), <https://www.nytimes.com/2019/08/27/business/steam-epic-games-store.html>.

1 **2. Competition in PC Gaming Distribution Would Force Down Valve's
2 Commission Rate**

3 294. Without the Valve PMFN and other conduct described herein, competition would
4 force Valve to lower its commission rate to one supported by its costs plus a reasonable profit
5 rather than supported by its anticompetitive conduct to exclude competition.

6 295. Because publishers cannot offer their games for lower prices on other storefronts
7 willing to charge lower revenue shares, the market lacks a mechanism to force Valve to whittle
8 down the revenue sharing percentages it imposes on publishers distributing their games on
9 Steam. The PMFN discourages "selective discounting" because if the publisher offers a lower
10 price elsewhere, it must extend that lower price to its sales on Steam. This penalizes a publisher
11 for discounting since it will make less money on each Steam sale. A publisher is required to
12 reduce prices on Steam if it wants to reduce its prices to any portion of its customers.

13 296. Without Valve's undue restraints, publishers could and would contract with other
14 storefronts to offer exclusives, which are valuable promotional tools for both stores and
15 publishers to attract customers and increase game sales. In response, Valve would have to
16 compete with other stores in negotiations with publishers—including, for example, in terms of
17 price, revenue share, minimum sales guarantees, and marketing support—to get an exclusive
18 offering on Steam, or simultaneous release rather than an exclusive on a competing marketplace.

19 297. In fact, Valve recently recognized this. It dropped its commission rate for the
20 relatively few highest grossing games "just before the Epic Store went live," and in direct
21 response to "its strongest competitor in 10 years offer[ing] a better deal to developers."¹²⁷ The
22 change had no effect on virtually all publishers as their individual games will not reach the
23 revenue threshold for the reduced rate, particularly since the revenue threshold is after
24 accounting for refunds, chargebacks, country-specific taxes/VAT, and other adjustments. Valve
25 reacted to Epic's entry not by offering a more competitive rate to all publishers, but by

27 ¹²⁷ Conditt, '*Half-Life: Alyx*' is proof Valve answers to no one, *supra* note 7.
28

1 selectively targeting the tentpole games that, if lost, could cause Valve to lose its “stranglehold”
 2 on PC game distribution. In other words, even this modest, supposedly competitive, step was in
 3 fact an anticompetitive maneuver, and an indicator of Valve’s continued ability to command a
 4 commission rate above the rate that would obtain in a competitive market for PC game
 5 distribution.

6 298. Using data from Steam, Video Game Insights estimates that 96% of games on
 7 Steam are indie games, meaning the publisher has less than \$1 million in sales of each game on
 8 Steam and less than \$50 million in lifetime revenue on Steam.¹²⁸ These games will never reach
 9 the lowered commission threshold.

10 299. In announcing the unilateral change to the SDA that lowered the commission rate
 11 for the highest-selling games, Valve explained: “It’s always been apparent that successful games
 12 and their large audiences have a material impact on those network effects so making sure Steam
 13 recognizes and continues to be an attractive platform for those games is an important goal for all
 14 participants in the network.” It continued: “Our hope is this change will reward the positive
 15 network effects generated by developers of big games, further aligning their interests with Steam
 16 and the community.”¹²⁹

17 300. Valve recognized, in other words, that the lower commission rate for the highest
 18 selling games was to keep these important game studios on Steam rather than pursuing more
 19 attractive financial arrangements with other stores. As importantly, the studios’ large fan bases
 20 will remain on Steam rather than purchasing the games through another store, such as its
 21 emerging competitor Epic Games Store that offers more favorable terms to publishers.

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 23
 24 ¹²⁸ *Indie games make up 40% of all units sold on Steam*, VIDEO GAME INSIGHTS (Sept. 1,
 2021), <https://vginsights.com/insights/article/indie-games-make-up-40-of-all-units-sold-on-steam>; *see About Video Game Insights*, VIDEO GAME INSIGHTS, <https://vginsights.com/about> (last accessed Dec. 17, 2021) (defining AAA Publishers, AA Publishers, and Indie Publishers).

25
 26 ¹²⁹ Valve Corporation, *New Revenue Share Tiers and other updates to the Steam*
 Distribution Agreement (Nov. 30, 2018), <https://steamcommunity.com/groups/steamworks/announcements/detail/1697191267930157838>.

1 301. Valve wants to prevent other stores from generating “positive network effects”
 2 and reaching a viable scale to compete with Steam through other stores offering publishers more
 3 favorable distribution terms, and by attracting consumers through exclusive offers, lower prices,
 4 and/or better features.

5 302. Though Valve lowered its revenue share for games earning over \$10 million, its
 6 share for all three tiers is above the revenue share that would be offered in a competitive market.
 7 The lowered fees for the highest selling games are an admission that the 30% rate was
 8 supracompetitive, and it remains supracompetitive for even the highest selling games.

9 303. The commission rate decreases are not a procompetitive volume discount as they
 10 bear no relationship to the number of games sold, amount of bandwidth used, number of
 11 Steamworks features incorporated, hours of gameplay, or any other metric that might relate to
 12 Valve’s costs. In fact, they do not relate to the volume sold because the game’s specific retail
 13 price set by its publishers affects how many units have to be sold to reach the lower commission
 14 rate. The commission rate decreases were a concession to the largest game publishers to keep
 15 them distributing their blockbuster games on Steam in the face of more favorable revenue
 16 sharing percentages on other stores and the potential ability of these largest publishers to self-
 17 distribute their games.

18 304. Competition for exclusives would also result in procompetitive benefits for
 19 publishers and consumers, for example, upfront payments that publishers invest in additional
 20 development resources, increasing the quality, innovation, and number of games offered to
 21 consumers. Instead, Steam requires delivery by right of contract and artificially keeps prices
 22 high.

23 305. By prohibiting exclusives on other storefronts, Valve has exercised undue control
 24 in the marketplace and deprived publishers of higher sales and more favorable revenue share
 25 agreements that they otherwise could have received.

26 306. Absent the PMFN and Valve’s other conduct, publishers could and would
 27 contract with other stores to offer their games and DLC with exclusive offers and potentially at
 28

1 lower prices than the prices offered for the same games on Steam. This would attract additional
 2 customers to purchase games on the other stores, driving market share away from Steam and
 3 onto other PC game distribution stores. Further, this would allow publishers to reach a broader
 4 consumer base and increase revenues through additional sales (and by keeping a greater
 5 percentage of each sale) even if they offer a lower retail price to game buyers.

6 307. With competition for distribution of PC games, Valve would be pushed to offer
 7 better commission rates to publishers, allowing publishers to keep more of the sales revenues
 8 from their products. In other words, the 30% revenue share Valve imposes on the majority of
 9 publishers would be (and should have been) substantially reduced.

10 **3. Valve Forecloses Other Stores that Offer More Competitive
 11 Commission Rates**

12 308. Other storefronts already offer (or did offer before being forced out of business)
 13 more publisher-friendly revenue share agreements. For example, Discord offered a 90/10
 14 revenue split (Discord's store is now out of business), Indie Game Store offered a 80/20 split
 15 (with the option for a developer to reduce its share to 70% and give the remaining 10% to a
 16 charity of choice) (Indie Game Store is now out of business), Epic Games Store offers an 88/12
 17 revenue split, and Humble Bundle offers a 75/25 split for games on the Humble Store and 95/5
 18 revenue split for sales through the Humble Widget. Microsoft recently lowered its revenue share
 19 for PC games on the Microsoft Store to an 88/12 split, matching Epic Games Store. Itch.io, a
 20 popular store for indie games, allows developers to set their own revenue share percentage
 21 anywhere from 0% to 100%, with a default of 10%, meaning a 90/10 split for publishers.

22 309. Given the PMFN and Valve's other conduct, publishers cannot use the more
 23 advantageous revenue share agreements to offer a lower price on competing stores to try to boost
 24 sales.

25 310. Other digital distribution industries also have lower commissions. Google Play
 26 Store and Apple's App Store previously charged a 30% commission for distribution of mobile
 27
 28

apps, and it is widely assumed they took their commission rates from Steam.¹³⁰ Both stores now charge a 15% commission for developers on the first \$1 million in revenues each year.¹³¹ In announcing the drop from 30%, Apple explained the change “will benefit the vast majority of developers who sell digital goods and services on the store, providing them with a reduced commission on paid apps and in-app purchases.” Google stated that the reduction in fees provides “funds that can help developers scale up at a critical phase of their growth by hiring more engineers, adding to their marketing staff, increasing server capacity, and more.”¹³²

311. As former senior App Store executive Phillip Shoemaker explained, when Apple launched the App Store in 2008, it was a “revolutionary” method for app developers to sell to customers. Because the simplicity was not matched elsewhere, “people were willing to bite that 30 percent. But now, those kinds of tools are a dime a dozen.” Mr. Shoemaker noted that “I think we’re realizing that 30 percent is way too much,” and Apple “should [charge] closer to” the roughly 3 percent charged by credit card companies to process transactions given Apple’s relatively minimal variable costs for processing App sales.¹³³ Apple has in fact cut its commission in half, and Valve’s variable costs are similarly minimal.

312. Microsoft also charges a 15% revenue share on all purchases of apps from its Microsoft Store. If the app developer uses its own or a third-party commerce platform in their

¹³⁰ J. Conditt, *Apple's App Store Antitrust Questions Will Be Uncomfortable for Valve*, ENGADGET (July 29, 2020), <https://www.engadget.com/apple-google-valve-steam-antitrust-hearings-app-store-22144206.html>.

¹³¹ Google Help, *Changes to Google Play's Service Fee in 2021*, <https://support.google.com/googleplay/android-developer/answer/10632485> (last accessed Dec. 17, 2021); Press Release, *Apple Announced App Store Small Business Program*, Apple Inc. (Nov. 18, 2020), <https://www.apple.com/newsroom/2020/11/apple-announces-app-store-small-business-program/>.

¹³² Sameer Samat, *Boosting developer success on Google Play*, Android Developers Blog (Mar. 16, 2021), <https://android-developers.googleblog.com/2021/03/boosting-dev-success.html>.

¹³³ Nicas, *How Apple's 30% App Store Cut Became a Boon and a Headache*, supra note 124.

1 app, Microsoft takes no fee and the developers keeps 100% of their revenue.¹³⁴ (As noted above,
 2 the commission rate is 12% for PC games.)

3 313. Other online retailers selling third-party products to customers also charge
 4 commission rates significantly less than Valve's 30%. Amazon charges between 8% and 17%
 5 depending on product category; eBay charges 10% to 12% depending on product category; Etsy
 6 charges 5% (plus a 3% + \$0.25 payment processing fee when using Etsy Payments); Walmart
 7 charges 6% to 15% depending on product category for its third-party marketplace; and Poshmark
 8 charges a 20% commission for sales over \$15.¹³⁵

9 314. The practice of extracting 30% of every software sale associated with the
 10 underlying platform is one of the principal bases for a Congressional investigation into Apple's
 11 and other large technology companies' monopolistic and anticompetitive practices. The Digital
 12 Markets Report concluded there were serious competition problems with such businesses.

13 315. For example, the Digital Markets Report begins by stating that "numerous
 14 businesses described how dominant platforms exploit their gatekeeper power to dictate terms and
 15 extract concessions that no one would reasonably consent to in a competitive market . . . [T]heir
 16 dependence on these gatekeepers to access users and markets requires concessions and demands
 17 that carry significant economic harm, but that are 'the cost of doing business.'"¹³⁶ As discussed
 18 above, while the report claims "Apple established its 30% commission on paid apps in 2009 with
 19 the introduction of the App Store, and that rate has become the industry standard,"¹³⁷ it was in
 20 fact Steam that first developed the 30% store commission.

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 22
 23 ¹³⁴ Giorgio Sardo, *Building a new, open Microsoft Store on Windows 11*, Microsoft
 24 Windows Blogs (June 24, 2021),
<https://blogs.windows.com/windowsexperience/2021/06/24/building-a-new-open-microsoft-store-on-windows-11/>.

25 ¹³⁵ Analysis Group, *Apple's App Store and Other Digital Marketplaces* app. A4 (July 22,
 26 2020).

27 ¹³⁶ Digital Markets Report at 11.

¹³⁷ *Id.* at 98.

1 316. Valve's 30% commission has *never* been subject to competition by rivals in a
 2 competitive market. At the time Steam was launched, most game distribution occurred at brick-
 3 and-mortar retailers like Walmart, GameStop, and Best Buy. While Valve was competing
 4 against these retailers in a sense, it had a massive and indisputable cost advantage in that Valve
 5 did not have to pay for real estate, salaries, packaging, shipping, and the other substantial costs
 6 that brick-and-mortar retailers face. These brick-and-mortar retailers could not meaningfully
 7 compete against Valve by lowering their own commissions, because doing so would put them
 8 out of business.

9 317. Only other *digital* distributors could meaningfully apply competitive pressure to
 10 Valve's excessive commissions. Many have tried, but they have failed because Valve's
 11 anticompetitive conduct has blocked them. That means Valve's 30% commission was never
 12 subject to intensive competition, and the fact that Valve's commission has not budged shows the
 13 extent of its antitrust violation—if the market reflected competitive forces, Valve's commission
 14 should have significantly decreased to levels approaching cost, and the variable costs of digital
 15 distribution are near zero. That Valve has been able to keep the same price for nearly fifteen
 16 years in a market that has matured and seen multiple entrants try to compete on price and quality
 17 (but failed due to Valve's anticompetitive restraints) is further evidence this has never been a
 18 competitive market.

19 318. Valve's anticompetitive conduct decreases output by decreasing the number of
 20 additional games that would be sold in the market absent Valve's conduct. Publishers (including
 21 Plaintiffs) must undertake a cost/benefit analysis to determine whether the largely fixed costs of
 22 game development could be recouped through sales to gamers. If publishers made more revenue
 23 per sale (as they would be able to do if commissions were more competitive), then they could
 24 develop more games and, by virtue of that expanded development, there would be greater
 25 quantity and variety of games in the marketplace. Likewise, as discussed above, if commissions
 26 were competitive, publishers would earn higher revenues while simultaneously selling their
 27 games at lower prices to consumers. In a world where commissions were competitive, increased
 28

1 publisher profit combined with lower consumer prices would increase output beyond what it
 2 historically had been.

3 319. Valve's conduct has also decreased quality in the market. Because of Valve's
 4 exorbitant fees, publishers have attempted a number of workaround strategies that have led to
 5 consumer backlash. If Valve charged competitive commissions, the economic incentive to
 6 attempt such strategies would decrease, benefitting publishers.

7 320. Because Valve enjoys such strategic advantages in the relevant market, it also
 8 does not provide a competitive level of quality to publishers, including Plaintiffs, in terms of the
 9 Steam Store because it does not need to do so in order to compete. Valve prioritizes which
 10 games are shown to potential customers using an automatic algorithm, presumably to save costs,
 11 that can unfairly harm publishers trying to get visibility for their products. This automatic
 12 approach also puts a strong emphasis on discounting, which causes publishers to artificially
 13 inflate their list prices on the Steam Store. Valve has few, if any, dedicated marketing staff to
 14 help publishers market their games. Publishers must do their own marketing and are thus forced
 15 to market Steam by driving their customers toward the Steam Store. If the PC game distribution
 16 market were competitive, Valve would be forced to offer a competitive level of quality in its
 17 store as well, benefiting publishers.

18 321. Valve's conduct harms quality in other ways. Valve reinvests a minuscule portion
 19 of its revenue into improving and maintaining the Steam Store, with very few personnel
 20 allocated to Steam Store business development, customer support, and engineering. Competing
 21 stores generally offer superior infrastructure and support, despite their much smaller market
 22 share.

23 322. Valve's lack of investment in the Steam Platform has allowed cybersecurity
 24 vulnerabilities to proliferate for years, endangering consumers and gamers alike. For example, in
 25 2011, hackers stole "information about Steam transactions between 2004 and 2008" that
 26 contained "names, email addresses, encrypted billing addresses and encrypted credit card
 27 information," which forced Valve CEO Gabe Newell to advise Steam Platform users to "watch

your credit activity and statements.”¹³⁸ By 2015, 77,000 Steam user accounts were being “hijacked and pillaged each month.”¹³⁹ And by 2016, a cottage industry of “Steam Stealer” malware had developed that allowed criminals around the world to defraud Steam users, transforming the Steam Platform “into the devil’s playground.”¹⁴⁰ In 2019, Valve agreed to fix a “zero-day” security flaw that had potentially exposed tens of millions of Steam users’ computers to hackers, but only after Valve had been publicly pressured to do so.¹⁴¹ Later that same year, Valve halted trading and selling of digital items for one video game because “nearly all key purchases that end up being traded or sold on the marketplace are believed to be fraud-sourced” by “worldwide fraud networks” engaged in money laundering.¹⁴²

323. Epic CEO Tim Sweeney has stated that if Steam did not charge such a highly inflated commission, “Epic would hastily organize a retreat from exclusives (while honoring our partner commitments) and consider putting our own games on Steam,” which would be a “glorious moment in the history of PC gaming, and would have a sweeping impact on other platforms for generations to come.”¹⁴³

324. Instead, Valve announced facial changes to its pricing structure that are not real changes at all, because they only reduce the marginal commission for the most successful games,

¹³⁸ Message from Gabe to Steam Community, VALVE (Feb. 10, 2012), <https://store.steampowered.com/oldnews/7323>.

¹³⁹ Steam, Security and Trading, VALVE (Dec. 9, 2015), <https://store.steampowered.com/oldnews/19618>.

¹⁴⁰ *Steam Stealers*, KASPERSKY LAB (Mar. 2016), https://media.kasperskycontenthub.com/wpcontent/uploads/sites/43/2018/03/07191212/Steam_Stealers_research_ENG.pdf.

¹⁴¹ Caitlin Cimpanu, *Researcher publishes second Steam zero day after getting banned on Valve's bug bounty program*, ZDNET (Aug. 21, 2019), <https://www.zdnet.com/article/researcher-publishes-second-steam-zero-day-after-getting-banned-on-valves-bug-bounty-program/>.

¹⁴² Key Change, VALVE (Oct. 28, 2019), <https://blog.counter-strike.net/index.php/2019/10/26113/> (“Account theft has been around since Steam began, but with the introduction of Steam Trading, the problem has increased twenty-fold as the number one complaint from our users.”).

¹⁴³ Tim Sweeney (@TimSweeneyEpic), Twitter (Apr. 24, 2019, 6:05 PM), <https://twitter.com/timsweeneyepic/status/1121218551342350336?lang=en>.

1 and then only if a publisher sells more than preset amounts of a single game in a year. In reality,
 2 the vast bulk of games do not sell anywhere near the levels needed to trigger the lower marginal
 3 commissions in Valve's new structure, meaning that Valve is essentially charging the exact same
 4 commissions as always, just prettied up by some PR.

5 325. While the vast majority of game publishers consider Steam a must-have, Ubisoft
 6 is one of the few that has partially escaped Steam's orbit in the real world. Over the last three
 7 years, Ubisoft, a publicly traded company, averaged €1.76 billion in "Net Bookings" (i.e.,
 8 "sales").¹⁴⁴ Given its size and number of blockbuster hits, Ubisoft is one of the few game
 9 publishers that could feasibly avoid Steam for some of its titles and not go out of business.
 10 Ubisoft's partial no-Steam strategy is fairly new and could very well fail, but in the interim
 11 provides a useful picture of how publishers would react to the removal of Valve's
 12 anticompetitive conduct from the market.

13 326. "For Years, Ubisoft released blockbuster titles like Assassin's Creed and Splinter
 14 Cell on Steam."¹⁴⁵ However, according to Ubisoft's vice president for partnerships and revenue,
 15 Chris Early, Ubisoft "decided not to sell the sequel to its hit game Tom Clancy's The Division on
 16 [Steam] because Valve would not modify its revenue-sharing model"¹⁴⁶ Ubisoft sold this hit PC
 17 game on Epic and its own platform.¹⁴⁷

18 327. Ubisoft has selectively engaged in the same strategy for a few other marquee
 19 games, while maintaining a large library of games on the Steam Store. For the games where
 20 Ubisoft continues to sell in the Steam Store, as mentioned above, Ubisoft generally abides by the
 21 PMFN.

22

23 ¹⁴⁴ Ubisoft, *Investor Center, Key Figures*,
 24 https://staticctf.akamaized.net/8aefmxkpxwl/JdRZ01IK6RqlqhbMmjVvV/e4c8b942be090b6c1cb6d7035b1ec825/Ubisoftkeyfiguressept302020_tcm99-28749_tcm99-196733-32.xlsx (last accessed June 10, 2021).

25 ¹⁴⁵ Bailey, *Fortnite Maker Wants to Sell More Games, and Build a Platform to Do It*, *supra*
 26 note 126.

27 ¹⁴⁶ *Id.*

28 ¹⁴⁷ *Id.*

1 328. On the other hand, for games that are *not* available on the Steam Store—and thus
 2 games where Ubisoft is not subject to the Valve PMFN—there are examples where Ubisoft
 3 passed on commissions savings to consumers, at least temporarily. Specifically, Ubisoft pays an
 4 implicit 0% commission when selling through Uplay, and a 12% commission when selling
 5 through the Epic Game Store. At times, Ubisoft has offered lower prices through Uplay than
 6 through the Epic Game Store, showing that publishers would pass on savings from lower
 7 commissions to consumers to some degree.

8 329. For example, on January 28, 2021, Ubisoft discounted its PC game “Assassin’s
 9 Creed Valhalla” from \$59.99 (the list price it was selling for on Uplay and Epic) to \$49.79 on its
 10 Uplay platform, but did not discount the game on the Epic Game Store. Ubisoft again
 11 discounted this game on February 11, 2021, to \$44.99 on its Uplay platform, while discounting
 12 the game to \$49.79 on the Epic platform.

13 330. As another example, again on January 28, 2021, Ubisoft discounted its PC game
 14 “Watch Dogs: Legion” from \$59.99 (the list price it was selling for on Uplay and Epic) to \$40.19
 15 on its Uplay platform. Ubisoft again discounted this game on February 17, 2021, to \$35.99 on
 16 its Uplay platform, while discounting the game to \$40.19 on the Epic platform.

17 331. Consumers and publishers in the relevant markets have been denied the benefits
 18 of price competition that would similarly lead to lower prices (and commissions for publishers)
 19 on alternative storefronts.

20 332. If Valve did not block price competition for Steam-enabled games, gamers and
 21 publishers would be able to have a high-quality platform *while also* enjoying the benefits of price
 22 competition in the distribution market. That would improve quality for both gamers and
 23 publishers (including Wolfire and Dark Catt), all while lowering prices for everyone.

24 **B. Valve Excludes Potential Competitors from the Market**

25 333. The Valve PMFN erects a barrier to entry to the PC game distribution market. PC
 26 game distributors may attempt to offer their services at lower prices (lower revenue sharing
 27 percentages), which they can do profitably by working out more favorable terms with publishers

1 or otherwise innovating to create efficiencies. The PMFN prevents these stores from benefiting
 2 from their efficiencies and using lower prices or exclusive offerings to gain a foothold in the
 3 market because publishers contractually cannot offer their games for lower prices or at an earlier
 4 date on the competing stores. Publishers cannot forgo making their games available on Steam
 5 and stores selling Steam keys to avoid the PMFN. Valve's PMFN thereby erects an artificial
 6 barrier to entry against potential competitors and stifles competition from other storefronts that
 7 would benefit publishers and potentially consumers.

8 334. Publishers have reduced incentive to lower retail prices to try to gain customers
 9 because they have to correspondingly lower their price on Steam. The publisher must be able to
 10 make enough sales on the other storefront to offset the lost revenue from sales on Steam at the
 11 new lower price. Because of Steam's dominant position as a PC game distributor and the
 12 supracompetitive revenue share Valve extracts, this is highly unlikely to occur. Given the price
 13 match, customers will continue to buy on Steam, and publishers will make less money on each
 14 sale. Publishers accordingly have less reason to lower prices even if they are able to keep more
 15 of the sales revenues from another store.

16 335. Even if the other storefront offers publishers a more favorable revenue share, they
 17 cannot encourage consumers to switch stores through lower pricing. The other storefront's offer
 18 becomes less meaningful in application and the publishers remain reliant on Steam and Valve.

19 336. By removing price competition across the market and charging publishers a
 20 supracompetitive revenue share, Valve also suppresses quantity and quality of PC games by
 21 limiting publishers' distribution options and ways to earn a return on their investment. Other PC
 22 gaming stores have had great difficulty in effectively gaining market share and contesting
 23 Valve's market position because Valve's conduct as alleged in this Complaint prevents them
 24 from competing on price.

25 337. Epic is trying to succeed with its own distribution site, but other developers and
 26 publishers, even giant companies such as EA, Ubisoft, and Microsoft, are unable to take similar
 27 actions to challenge Valve's market power given its PMFN and other conduct described herein.
 28

338. Epic is behind the gaming phenomenon, Fortnite, which earned over \$4 billion between its launch in September 2017 and the summer of 2019.¹⁴⁸ Fortnite’s user base gave Epic a strong foundation from which to launch its store, which Epic started because, as its CEO explained, “Stores extract an enormous portion of game industry profits and are ripe for disruption.”¹⁴⁹ As a prominent game publisher, Epic wanted to avoid paying third parties excessive commissions, and also to bring about a low-commission model for game publishers generally. To attract publishers to its new storefront, Epic offered publishers a much lower revenue sharing percentage of 12% for sales on its store, and Epic waived the royalty for developers using its popular Unreal Engine game engine for their game (typically 5% of gross revenue after a revenue threshold is reached). Thus, like Discord found with its own 10% commission, Epic determined that a 12% commission was more than sufficient to cover its costs for creating and maintaining a store, and—at least, in a competitive market unaffected by anticompetitive restraints—allow it to go toe-to-toe with Valve. It has also spent hundreds of millions of dollars attracting developers through minimum revenue guarantees, committing \$444 million to exclusivity deals in 2020.¹⁵⁰ Its sales of third-party games in 2020 were \$265 million, by comparison.¹⁵¹ Publishers welcomed the competition Epic’s store brought to the market. As one independent game publisher explained, this competition was a “very good thing for the industry.”¹⁵² The CEO of Paradox Interactive explained that this competition will “benefit both players and game publishers.”¹⁵³

148 *Id.*

149 *Id.*

¹⁵⁰ Tyler Wilde, *Epic will lose over \$300M on Epic Games Store exclusive, is fine with that*, PC GAMER (Apr. 10, 2021), <https://www.pcgamer.com/epic-games-store-exclusives-apple-lawsuit/>.

¹⁵¹ *Epic Games Store 2020 Year in Review*, supra note 19.

¹⁵² Jeremy Peel & Rachel Watts, *Rami Ismail*: “We’re seeing Steam bleed...that’s a very good thing for the industry,” PCGAMES (Mar. 20, 2019), <https://www.pcgamesn.com/rami-ismail-interview>.

¹⁵³ Tomas Franzese, *Paradox Interactive CEO Thinks Competition from Epic Games Store Will “Benefit Both Players and Game Publishers”*, DUALSHOCKERS (Nov. 12, 2019), <https://www.dualshockers.com/epic-games-store-benefits-players-paradox-interactive/>.

1 339. Epic spends heavily to attract customers as well. To attract gamers to its new
 2 platform, Epic began giving away large volumes of games for free through its storefront. In
 3 2020 alone, it gave away 103 games that would have cost a customer a total of \$2,407 to
 4 purchase, and customers claimed a total of 749 million copies of the 103 free games.¹⁵⁴

5 340. Epic Games Store also attempts to compete with Valve by soliciting timed
 6 exclusives from publishers with benefits including minimum revenue guarantees and/or upfront
 7 payments. These deals may allow publishers to sell the game at a lower price due to the lower
 8 revenue share and increase their sales, or improve the quality of the game using the guaranteed
 9 funding and greater financial security to increase their sales. Specifically, Epic has deployed a
 10 strategy wherein it gives publishers “some combination of marketing commitments, development
 11 funding, or revenue guarantees” in exchange for a promise to not release their games on any
 12 alternative platforms during a preset exclusivity window.

13 341. Epic uses exclusives as an attempt to compete against Valve’s entrenched market
 14 position; by doing so, it draws in users wanting the most popular new games and can kick-start
 15 network effects on the Epic store. But the “exclusives” strategy has caused backlash from
 16 gamers who are irritated they need to either wait for a Steam-enabled release or use another PC
 17 store they do not prefer. As one article explains, “Poaching titles from Steam isn’t the best of
 18 practices, especially when such an immense amount of backlash is received from fans far and
 19 wide.”¹⁵⁵ Despite the frustrations Epic’s strategy created, it helped spur growth for the Epic
 20 store.

21 342. But, even with these aggressive tactics, the Epic store has been unable to move a
 22 significant share of the market away from Valve and the Steam Store. For example, Epic has
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26 ¹⁵⁴ *Epic Games Store 2020 Year in Review*, supra note 19.

27 ¹⁵⁵ Ryan Epps, *Epic Games Store Exclusivity Was A Mistake For Borderlands 3*, THE
 GAMER (Sep. 18, 2019), <https://www.thegamer.com/borderlands-3-epic-games-store-mistake/>.

deployed this strategy for high-profile games, including Borderlands 3.¹⁵⁶ Notwithstanding this strategy, Borderlands 3 has since been released through the Steam Store and is enjoying commercial success there.¹⁵⁷ Analyzing 2019 figures, one industry analyst explained that, despite its dogged efforts, Epic’s store likely had a market share “a little above 2%” and that “Epic games paid more than their market share to get that market share. They spent \$880M for revenue of \$680M.”¹⁵⁸

343. The 2020 figures are roughly similar to those reported in 2019. The most recent year-in-review report for the Epic store shows that PC desktop gamers spent \$700 million on the Epic store, which includes approximately \$435 million in sales from Epic's proprietary games.¹⁵⁹ And the Epic store ended up giving away product valued at \$2.4 billion while only earning \$700 million through its storefront.¹⁶⁰

344. As the market for PC game distribution is roughly \$36 billion (including microtransactions), Epic's market share is only around 1.9%, even after roughly two years of aggressive and well-funded competition against the Steam Store.

345. As explained by one industry analyst, "Two years and four months after its inception on December 4, 2018, the Epic Games Store hasn't done much for its parent company aside from being one of its biggest money losers. This is according to court documents shared by a ResetEra user, which reveal that the fledgling Steam competitor had cost Epic Games

¹⁵⁶ Kyle Orland, *Borderlands 3 is the next big Epic Games Store exclusive*, ARS TECHNICA (Apr. 3, 2019), <https://arstechnica.com/gaming/2019/04/borderlands-3-is-the-next-big-epic-game-store-exclusive/>.

¹⁵⁷ Rana Muneeb, *Borderlands 3 Is Doing Well On Steam Despite Epic Store Exclusivity*, SEGMENTNEXT (Oct. 28, 2020), <https://segmentnext.com/2020/03/17/borderlands-3-steam-epic-store/>.

¹⁵⁸ Avihay Hermon, *Epic Games Store, behind the numbers*, MEDIUM (Feb. 6, 2020), <https://medium.com/@h.avihay/epic-games-store-behind-the-numbers-fe7ddef4e00c>.

¹⁵⁹ Epic Games Store 2020 Year in Review, *supra* note 19.

160 *Id*

1 approximately \$181 million and \$273 million in losses in 2019 and 2020, respectively.”¹⁶¹ Epic
 2 has stated that its 12% commission rate covers its costs for the Epic Games Store, showing these
 3 losses are due to heavy promotional spending to break through Valve’s market position rather
 4 than an insufficient revenue share.

5 346. The Epic store is therefore yet another example of how even a well-funded
 6 publisher with a huge user base cannot put a dent in the Steam Store’s market share.

7 347. Valve’s anticompetitive conduct is a major reason for the Epic store’s failure.
 8 Because of Valve’s PMFN, other publishers on the Epic store cannot discount their prices below
 9 those offered on Steam, preventing Epic from attracting users and building market share. Due to
 10 fear of retaliation from Valve, a publisher’s only method of avoiding the PMFN is dropping
 11 Steam entirely. But as detailed herein, that is not an economically viable strategy, and therefore
 12 publishers have no choice but to comply with the PMFN. The result is that Epic’s lower
 13 commission structure cannot discipline Valve’s supracompetitive 30% commission.

14 348. Other potential Steam competitors do not have the financial resources and clout
 15 that Epic does and so are unable to make an offer of an exclusive that would be attractive to a
 16 publisher. Accordingly, exclusives remain a rare promotional tool in the PC game distribution
 17 market, as opposed to, for example, console gaming. In contrast, Sony PlayStation console
 18 offers approximately 300 games that are only available on PlayStation as a marketing tool to
 19 encourage consumers to purchase its hardware rather than competing consoles like Microsoft
 20 Xbox.

21 349. Even other billion-dollar companies with popular PC games, similar to Epic, have
 22 been foreclosed from competing successfully against Valve in the market for PC game
 23 distribution.

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 26 ¹⁶¹ Tsing Mui, *Epic Games Store Faces at Least \$330 Million in Unrecouped Costs, Won’t*
Be Profitable until 2023 at Earliest, FPS REVIEW (April 9, 2021),
<https://www.thefpsreview.com/2021/04/09/epic-games-store-faces-at-least-330-million-in-unrecouped-costs-wont-be-profitable-until-2023-at-earliest/>.

1 350. EA tried, and failed, to enter the PC game distribution market. EA is an
 2 American video game company headquartered in Redwood City, California, and is the second-
 3 largest gaming company in the Americas and Europe. A publicly traded company, EA currently
 4 maintains a \$41.73 billion market capitalization.¹⁶²

5 351. EA launched its Origin store and game launcher on June 3, 2011. Similar to
 6 Steam, Origin was designed to be a “direct-to-consumer gaming platform” where gamers could
 7 buy, download, and play games directly from EA, bypassing Valve’s commission rate.¹⁶³
 8 Although Origin originally offered only EA-developed games, EA soon after announced releases
 9 from other major publishers, including Warner Bros., THQ, and Capcom Entertainment, Inc.¹⁶⁴

10 352. Contemporaneous news articles described how Origin “presents the biggest threat
 11 to Steam’s dominance yet . . .”¹⁶⁵ Origin achieved a user base of more than 50 million total
 12 registered users, and EA was well positioned to have a viable gaming platform given its marquee
 13 titles including SimCity, The Sims, and Battlefield 3.¹⁶⁶

14 353. To help get Origin off the ground, EA initially mandated that all EA games would
 15 need to use Origin, even if purchased through alternative distributors. As a result of that
 16 strategy, EA withdrew its games from the Steam Store, which does not allow publishers to sell
 17 versions of games created for other platforms. While other distributors like GameStop were
 18 happy to sell Origin-enabled versions of games, Valve would not do so through its Steam Store.
 19 EA explained, “At present, there is only one download service [Steam] that will not allow this

20
 21 ¹⁶² *Quotes, Stocks, EA Overview*, MARKETWATCH
<https://www.marketwatch.com/investing/stock/ea>.

22 ¹⁶³ Press Release, *EA Launches Origin*,
https://s22.q4cdn.com/894350492/files/doc_news/archive/582630.pdf.

23 ¹⁶⁴ Press Release, *Origin Expands to Offer Games from Major Publishers*,
https://s22.q4cdn.com/894350492/files/doc_news/archive/618584.pdf.

24 ¹⁶⁵ Fred Dutton, *Steam vs. Origin: Is Competition Good for Gamers?*, EUROPAMER, (Dec
 19, 2011), <https://www.eurogamer.net/articles/2011-08-30-steam-vs-origin-is-competition-good-for-gamers-article>.

25 ¹⁶⁶ Chris Pereira, *EA Boss Addresses Virtual Reality’s “Dork Factor,” Origin Vs. Steam*,
 GAMESPOT (June 30, 2014), <https://www.gamespot.com/articles/ea-boss-addresses-virtual-reality-s-dork-factor-origin-vs-steam/1100-6420827/>.

1 relationship. . . . Steam has imposed a set of business terms for developers hoping to sell content
 2 on that service—many of which are not imposed by other game services.”

3 354. Despite the draw of its popular franchises such as FIFA, the Sims, and Battlefield,
 4 EA was unable to break through Valve’s anticompetitive tactics in the PC game distribution
 5 market and returned its games to Steam in 2020 to “be where the players are.”¹⁶⁷ As one article
 6 put it, “It has been a long and largely fruitless road for Origin, EA’s PC gaming client that it had
 7 planned on building into a rival of Valve’s Steam. What was originally supposed to have been
 8 the chief antagonist to Steam in the ongoing PC gaming platform wars instead is best described
 9 as a failure to launch.”¹⁶⁸

10 355. Valve’s conduct thus relegated EA to being yet another publisher paying the
 11 bloated 30% tax Valve imposes on nearly every game sold through the Steam Store.

12 356. Microsoft also attempted to challenge Valve’s market position using its popular
 13 games and Windows operating system to attract users to its store. In 2012, Microsoft released the
 14 Microsoft Store (formerly known as Windows Store) as its digital distribution platform,
 15 including for PC games. Unlike other stores, Microsoft merged its other distribution channels
 16 into a single storefront, including games operating on both Windows, and its video game
 17 console, Xbox. The creation of a cross-console storefront later enabled a cross-platform
 18 capability (PC to Xbox), such that a Microsoft Store user can move between game play between
 19 consoles without needing to purchase the game on the separate devices (Xbox Play Anywhere).
 20 In turn, the Windows Store could become a “near-omnipresent digital storefront, giving
 21 Microsoft a captive audience for its library of software, and not coincidentally acts as a challenge

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 25 ¹⁶⁷ Gartenberg, *supra* note 48.
 26 ¹⁶⁸ Timothy Geigner, *EA To Rebrand Its Origin Platform As It Bows Out Of The PC*
 27 *Gaming Platform Wars*, TECHDIRT(Sep. 16, 2020),
<https://www.techdirt.com/articles/20200916/09394245318/ea-to-rebrand-origin-platform-as-it-bows-out-pc-gaming-platform-wars.shtml>.

1 to Steam's market dominance.”¹⁶⁹ Microsoft also leveraged its dominance of the Windows
 2 operating system by having its store pre-installed on Windows-based PCs.

3 357. To grow its share of the PC game distribution market, Microsoft began
 4 distributing many PC games published by Microsoft or its subsidiaries exclusively through the
 5 Microsoft Store. This included Sea of Thieves, Age of Empires, and Microsoft Flight Simulator.

6 358. Despite these efforts, Microsoft was unable to grow its share of the PC game
 7 distribution market to commercially viable levels. Microsoft has since retreated from this
 8 strategy and began selling its PC games on Steam in 2019.¹⁷⁰ As an insider remarked on
 9 Microsoft's surrender to Steam, Microsoft “has given up entirely on that vision . . . to dethrone
 10 Steam.”¹⁷¹

11 359. Ubisoft, publisher of blockbuster franchises such as Assassin’s Creed, Tom
 12 Clancy’s Rainbow Six Siege, and Anno, launched its Uplay gaming client and online store in
 13 2009. Though it has the ability to publish and sell games fully independently of Steam and
 14 Valve, Ubisoft continues to sell its games on Steam because of Valve’s hold on the market.

15 360. Amazon, through the Twitch Store, opened a joint platform/storefront in April
 16 2017, heralded as “one of the biggest challenges yet to Steam.”¹⁷² It was shuttered 18 months
 17 later.¹⁷³

20 ¹⁶⁹ Thomas Wilde, *After battling Microsoft in video games for years, Valve’s Steam is on a*
 21 *collision course with Apple*, GEEKWIRE (May 28, 2018),
<https://www.geekwire.com/2018/valve-3/>.

22 ¹⁷⁰ Nick Statt, *Microsoft will distribute more Xbox titles through Steam and finally support*
 23 *Win32 games*, THE VERGE (May 30, 2019), <https://www.theverge.com/2019/5/30/18645250/microsoft-xbox-game-studios-publishing-valve-steam-32-bit-windows>.

24 ¹⁷¹ *Id.*

25 ¹⁷² Rich McCormick, *Twitch will start selling games and giving its streamers a cut*, THE
 26 VERGE (Feb. 27, 2017), <https://www.theverge.com/2017/2/27/14748896/twitch-sell-games-streamers-cut>.

27 ¹⁷³ Bryon Rose, *Twitch Game Store Shutting Down After November 27*, GAMEREVOLUTION
 28 (Nov. 16, 2018), <https://www.gamerevolution.com/news/458393-twitch-game-store-shutting-down>.

1 361. Google also launched a competitive offering, Google Stadia, meant to be “the
 2 future of gaming.”¹⁷⁴ Yet a February 26, 2021 article announced it has “absolutely crumbled
 3 under expectations.”¹⁷⁵

4 362. Discord serves as another example of a failed attempt to compete in the relevant
 5 market against Steam. Discord is an application that offers text messaging, voice, and video
 6 calling for gamers to communicate with friends while playing a game.¹⁷⁶ Discord has
 7 experienced rapid growth since it launched, reporting 8.9 million daily users in 2017 and 100
 8 million daily users in 2020.¹⁷⁷ It had an existing user base of millions of active PC gamers and
 9 offered more favorable terms for developers. Within a year, Discord shut down both the store
 10 and its monthly subscription service for PC games.

11 363. In August 2018, Discord attempted to enter the relevant markets through a
 12 vertically integrated offering. At the time, a media intelligence company purportedly called
 13 Discord the “biggest threat [Steam’s] faced in years.”¹⁷⁸

14 364. With a large user base already registered in Discord for voice communications
 15 and social networking, Discord appeared to be a formidable competitor to Valve. Discord
 16 enticed gamers and publishers with attractive offerings, such as exclusive periods of curated
 17 games being offered for free.¹⁷⁹ Just a few months after the initial release, further enticing

20 ¹⁷⁴ Ian Sherr, *Google Stadia wants to be the future of gaming. So do Microsoft, Sony and Amazon*, CNET (Dec. 17, 2019), <https://www.cnet.com/news/google-stadia-wants-to-be-the-future-of-gaming-so-do-microsoft-sony-and-amazon/>.

22 ¹⁷⁵ Cade Onder, *Damning Google Stadia Report Reveals Why It's Failing*, SCREEN RANT (Feb. 26, 2021), <https://screenrant.com/google-stadia-damning-report-failing/>.

23 ¹⁷⁶ Kaylee Fagan, *Everything you need to know about Discord, the app that over 250 million gamers around the world are using to talk to each other*, INSIDER (Oct. 12, 2020), <https://www.businessinsider.com/how-to-use-discord-the-messaging-app-for-gamers-2018-5>.

25 ¹⁷⁷ *Id.*

26 ¹⁷⁸ Stefanie Fogel, *SuperData: Discord Is a ‘Major Threat’ To Steam*, VARIETY (July 2, 2018), <https://variety.com/2018/gaming/news/superdata-discord-vs-steam-1202863853/>.

27 ¹⁷⁹ *Discord Store Global Beta Is Live!*, DISCORD (blog) (Oct. 16, 2018), <https://blog.discord.com/discord-store-global-beta-is-live-38bfd044d648>.

1 developers, Discord announced that all developers—regardless of size—could self-publish
 2 games.

3 365. Even more significant, Discord announced a 90/10 revenue split. Publishers
 4 would pay just a 10% commission—that is, one-third of the size of Valve’s.¹⁸⁰ When Discord
 5 announced its new initiative, it openly questioned, “Why does it cost 30% to distribute
 6 games?”¹⁸¹ Discord concluded that it “[t]urns out, it does not cost 30% to distribute games in
 7 2018.”¹⁸² Discord settled on 10% because it “covers [its] operating costs,” but also added, “we’ll
 8 explore lowering it by optimizing our tech and making things more efficient.”¹⁸³

9 366. Despite its massive user base and a pro-developer and pro-consumer approach,
 10 Discord never gained traction. By early 2019, Discord started “downscaling” its efforts in favor
 11 of a model where gamers would gain access to a pool of games for a monthly fee, a service
 12 called Nitro.¹⁸⁴ By October 2019, Discord announced the Nitro offering would be shut down.¹⁸⁵

13 367. As mentioned above, Discord’s failure was largely caused by Valve’s
 14 anticompetitive conduct. When game developers released on Discord to take advantage of
 15 Discord’s lower commission structure, Valve would reach out to the game developer for
 16 violating Valve’s parity pricing requirements, chilling the game developer’s ability to do
 17 business with Discord. Discord’s low-commission strategy was unable to drive volume to the
 18 Discord store, because publishers could not steer gamers to Discord.

19
 20 ¹⁸⁰ Discord, *Why not 90/10?*, *supra* note 121; Austen Goslin, *In the race to beat Steam, the*
 21 *Discord Store just made a huge move*, POLYGON (Dec. 14, 2018),
<https://www.polygon.com/2018/12/14/18140790/discord-store-self-publishing-revenue-split>.

22 ¹⁸¹ Discord, *Why not 90/10?*, *supra* note 121.

23 ¹⁸² *Id.*

24 ¹⁸³ *Id.*

25 ¹⁸⁴ James Batchelor, *Discord Game Store refocuses on Nitro subscription, devs can now*
 26 *sell games directly*, GAMEINDUSTRY.BIZ, (Mar. 14, 2019),
<https://www.gamesindustry.biz/articles/2019-03-14-discord-game-store-refocuses-on-nitro-subscription-as-servers-allow-devs-to-sell-games-directly>.

27 ¹⁸⁵ *What’s Coming for Nitro*, DISCORD (Sep. 12, 2019), <https://blog.discord.com/whats-coming-for-nitro-a732ddc4b5b1>.

1 368. As a result, Discord was unable to achieve the scale necessary in the distribution of
 2 games to challenge Valve’s market power and discipline its supracompetitive prices. Without the
 3 ability to attract publishers with higher profits and gamers with lower prices, Discord failed, and
 4 Valve’s supracompetitive 30% commission went unchallenged.

5 369. Despite Discord’s failure to enter the relevant market, Valve recognized a nascent
 6 threat on the horizon. As Discord was increasingly gaining influence and power as a
 7 communications tool for gamers, Valve began copying Discord’s features one-by-one in Steam.
 8 For example, Valve introduced “Steam Chat,” which provides a friends list, secure voice chat,
 9 and group channels. A reporter for Business Insider put it succinctly: “The update takes many
 10 cues from Discord, including a suspiciously similar user interface” that looks “almost exactly the
 11 same.”¹⁸⁶

12 370. In a competitive market, publishers may choose to offer lower prices to
 13 consumers on competing stores but they could still earn more money from a greater number of
 14 transactions at the lower retail prices given the other store’s lower revenue share. Valve’s
 15 revenue share percentages would be forced down by competitive market pressure.

16 371. For example, assuming a publisher could sell its game for \$30 on Steam and \$25
 17 on the Microsoft Store, the revenue split would be \$21 / \$9 on Steam (70% / 30%) and \$22 / \$3
 18 on Microsoft (88% / 12%), earning more money for the publisher and costing the customer
 19 significantly less. In this example, the consumer would save \$5, which would likely lead to
 20 increased sales (and revenues) on the site offering the cheaper price. And the publisher would
 21 earn more revenue on each sale and more total revenue from a greater sales volume.

22 372. However, the Valve PMFN requires that publishers offer no worse than the same
 23 price on the Microsoft Store as they offer on Steam. Given Steam’s market dominance, Steam
 24 will get more sales than other stores when prices are equal, and its dominance will continue.

25
 26 ¹⁸⁶ Sean Wolfe, *The new and improved Steam Chat is here to take on Discord — here's how the two apps compare*, BUSINESS INSIDER (Jul. 28, 2018),
 27 <https://www.businessinsider.com/steam-chat-update-vs-discord-2018-7>.

373. Storefronts will only be able to attract a sufficient user base to become a real competitor to Steam when they can offer a better price or better promotions, but publishers are not able to work with the other stores to offer better terms to consumers because of the price parity and marketing restrictions PMFN, enforced by Steam's retaliatory conduct.

374. Consequently, publishers pay a supracompetitive revenue share to Valve because Valve prevents competition from other stores that would otherwise drive down its supracompetitive revenue sharing rate. And consumers are harmed because publishers are not able fully to invest in game improvements, new games, and/or lower retail prices.

CLASS ACTION ALLEGATIONS

375. Plaintiffs bring this action on behalf of themselves and all others similarly situated pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3) as representatives of a Class defined as follows:

All persons or entities in the United States and its territories that, directly or through an agent, have contracted with Valve Corporation to distribute a PC game via Steam and sold such game on or after January 28, 2017, and continuing through the present until the effects of its scheme are eliminated (the “Class Period”). Excluded from the Class are (a) Defendant, its parents, subsidiaries, affiliate entities, and employees, and (b) the Court and its personnel.

376. Plaintiffs are direct purchasers of Valve's services in the PC game distribution market, and they directly pay Valve's exorbitant commission fees. Valve's commission is taken from publishers before they receive funding from sales made through the Steam Store. Valve's contracts with publishers state the terms and conditions under which publishers sell games through the Steam Store, including the commission schedule that publishers will pay.

377. The Class Members are so numerous that joinder is impracticable. Hundreds of publishers have sold their games on Steam during the Class Period and continue to sell their games on Steam and on other stores using Steam keys.

1 378. The anticompetitive conduct of Valve alleged herein has imposed, and threatens
 2 to continue to impose, a common antitrust injury on the Class Members.

3 379. The identity of all Class Members is known by Valve. Valve can identify the
 4 Class Members via its internal business records, including, but not limited to, Class Members'
 5 account, Steam key usage, contractual, financial, publishing, and sales histories with Valve and
 6 Steam.

7 380. There are numerous questions of law and fact that are common to the Class and
 8 that predominate over any issues affecting any individual Class Member, which questions relate
 9 to the existence of the violations alleged, and the type and common pattern of injury sustained as
 10 a result thereof, including *inter alia*:

11 a. Whether the restrictions Valve imposes on publishers, including the
 12 contractual restrictions outlined in its SDA and Steamworks Documentation, as interpreted and
 13 enforced by Valve, are anticompetitive;

14 b. Whether there exists a relevant market for PC game distribution in the
 15 United States;

16 c. Whether Valve possesses market power and/or substantial market power in
 17 the market for PC game distribution in the United States and globally;

18 d. Whether Valve has unreasonably restrained trade in the PC game
 19 distribution market, including by way of its contractual terms, policies, practices, mandates, and
 20 restraints described herein;

21 e. Whether Valve has unlawfully monopolized, or attempted to monopolize,
 22 the PC game distribution market, including by way of contractual terms, policies, practices,
 23 mandates, and restraints described herein;

24 f. Whether Valve has substantially foreclosed competition in the market for
 25 PC game distribution in the United States and worldwide;

26 g. Whether Valve's scheme has permitted it to illegally acquire and/or
 27 maintain its monopoly in the PC game distribution market;

1 h. Whether the conduct alleged herein artificially created, maintained,
2 preserved, or enhanced Valve’s market power in the PC game distribution market;

3 i. Whether Valve’s scheme has a legitimate procompetitive justification and,
4 if so, whether it is outweighed by the anticompetitive effects of its conduct, and whether there are
5 substantially less restrictive ways to achieve any supposed procompetitive purpose;

6 j. The operative time period and extent of Valve’s antitrust violations and any
7 continuing effects;

8 k. Whether the conduct alleged herein caused damages to Class Members in
9 the form of paying a supracompetitive revenue share to Valve, reduced output, or reduced quality
10 of games;

11 l. The amount of damages incurred by the Class because of Valve’s conduct;
12 and

13 m. The nature and scope of injunctive and other equitable relief necessary to
14 restore a competitive market and protect the public interest.

15 381. Plaintiffs’ claims are typical of the claims of the Class Members. Plaintiffs and all
16 Class Members were damaged by the same wrongful conduct of Valve. Specifically, Valve’s
17 wrongdoing caused Class Members to pay inflated commissions to Valve.

18 382. Plaintiffs’ interests are coincident with, and not antagonistic to, those of other or
19 absent Class Members, such that it can fairly and adequately represent and protect the interests of
20 the Class Members.

21 383. Plaintiffs have retained counsel with substantial experience litigating complex
22 antitrust class actions. Plaintiffs and their counsel have the necessary financial resources to
23 adequately and vigorously litigate this class action.

24 384. The prosecution of separate actions by individual Class Members would create a
25 risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for
26 Valve.

385. Class treatment of Plaintiffs' federal and state antitrust claims is a superior method for the fair and efficient adjudication of this controversy in that, among other things, such treatment will permit a large number of similarly situated persons to prosecute common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. The damages suffered by many Class Members are small in relation to the expense and burden of individual litigation, and therefore, it is highly impracticable for such Class Members to individually attempt to redress the wrongful anticompetitive conduct alleged herein.

386. Valve's relationships with Plaintiffs and the Class have been substantially uniform in that Plaintiffs paid Valve the suprarevenue share (among other fees) and has been subjected to Valve's anticompetitive tactics. Common questions of law and fact will predominate over any individual questions of law and fact for the Class.

387. Valve acts and continues to act on grounds generally applicable to the Class, thereby making appropriate final equitable and injunctive relief with respect to the Class as a whole.

388. Plaintiffs know of no difficulty likely to be encountered in the maintenance of this action as a class action under Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3).

CLAIMS FOR RELIEF

COUNT ONE

Illegal Monopoly Maintenance in Violation of 15 U.S.C. § 2

389. Plaintiffs and Class Members repeat and incorporate each of the allegations contained in the paragraphs above as if fully set forth herein.

390. Valve, through its ownership and control of Steam, has a monopoly in the PC game distribution market and uses the Valve PMFN, Steam SDA, Steamworks Rules, and other conduct alleged herein to maintain its monopoly.

1 391. Valve, through its monopoly power and contracts, acts in an anticompetitive
 2 manner to control the price of games and DLC set by publishers in the PC game distribution
 3 market and keep prices at an elevated and uniform level.

4 392. Valve's commission rate is substantially higher than it otherwise would be in a
 5 competitive PC game distribution market free from Valve's anticompetitive practices. Valve is
 6 only able to maintain its supracompetitive rates due to the PMFN and other exclusionary and
 7 anticompetitive behavior described herein.

8 393. Valve's conduct has no legitimate business purpose or procompetitive effect but
 9 is designed to monopolize the PC game distribution market.

10 394. A marketplace without the restrictions imposed by the Valve PMFN, SDA, and
 11 Steam Key Rules as interpreted and enforced by Valve would result in Steam lowering its
 12 revenue sharing rates to compete with its rival stores, resulting in increased revenues for
 13 publishers.

14 395. A marketplace without the restrictions imposed by the Valve PMFN, SDA, and
 15 Steam Key Rules as interpreted and enforced by Valve would result in rival stores using revenue
 16 sharing percentages, marketing efforts, revenue guarantees, and development funds to compete
 17 for publishers' games and DLC, and in turn compete for consumers.

18 396. As discussed herein, the restrictions imposed by the Valve PMFN, SDA, Steam
 19 Key Rules, and other conduct prevent competition on Valve's revenue sharing rates and other
 20 business terms with publishers, which would lower Steam's market share and Valve's profits.
 21 Valve's conduct excludes rival storefronts (those in existence and potential new market entrants)
 22 from competing on price and number of offerings, and is anticompetitive.

23 397. Valve's conduct is not justified, because its conduct does not enhance overall
 24 efficiency or make the relevant markets more efficient.

25 398. Valve's conduct has had a substantial effect on interstate commerce.

26 399. Plaintiffs were injured in their business and property by paying a
 27 supracompetitive revenue share to Valve for sales of their games on Steam.

400. Class Members were similarly harmed in their business or property as a direct result of Valve's anticompetitive conduct. Due to the conduct described herein, they too paid a supracompetitive revenue share to Valve.

401. Valve uses the Valve PMFN, SDA, Steam Key Rules, and other conduct alleged herein to illegally maintain monopoly power and hinder competition in the PC game distribution market.

402. Plaintiffs and Class Members have suffered and will suffer injury of the type that
the antitrust laws were intended to prevent. Plaintiffs and Class Members have been and will be
injured by the harm to competition as a result of Valve's conduct.

403. Every day Valve continues with its conduct described herein and the Valve PMFN remains in effect, Valve continues to violate Section 2 of the Sherman Act.

COUNT TWO

Illegal Attempted Monopolization in Violation of 15 U.S.C. § 2

404. Plaintiffs and Class Members repeat and incorporate each of the allegations contained in the paragraphs above as if fully set forth herein.

405. Valve, through its PMFN and other conduct alleged herein, acts in an anticompetitive and exclusionary manner to control the price of games and DLC set by publishers throughout the PC game distribution market. Valve acts with the specific intent of monopolizing the PC game distribution market and maintaining its supracompetitive commission rate.

406. Through the PMFN and other exclusionary and anticompetitive behavior described herein, Valve has a dangerous probability of success in monopolizing the PC game distribution market.

407. Valve's conduct has had an anticompetitive effect in the relevant PC game distribution market.

408. Valve's conduct has no legitimate business purpose or procompetitive effect but is designed to monopolize the PC game distribution market.

1 409. A marketplace without the restrictions imposed by the Valve PMFN, SDA, and
2 Steam Key Rules as interpreted and enforced by Valve and other limitations would force Valve
3 to compete with rival stores on the terms they offer to Publishers to distribute PC games, and in
4 turn compete for consumers.

5 410. Instead, Valve's conduct excludes current and potential future rival storefronts
6 from competing on price, quantity, and quality of PC games, which is anticompetitive. Valve's
7 conduct is intended to establish and maintain Steam's monopoly in PC game distribution.

8 411. Valve's conduct has had a substantial effect on interstate commerce.

9 412. Plaintiffs have been or will be injured in their business and property by paying a
10 supracompetitive revenue share to Valve for sales of its game on Steam.

11 413. Class Members were similarly harmed in their business or property as a direct
12 result of Valve's anticompetitive conduct in attempting to monopolize the PC game distribution
13 market. The conduct described herein caused Class Members to pay a supracompetitive revenue
14 share to Valve.

15 414. Plaintiffs and Class Members have suffered and will suffer injury of the type that
16 the antitrust laws were intended to prevent. Plaintiffs and Class Members have been and will be
17 injured by the harm to competition as a result of Valve's conduct.

18 415. Every day Valve continues with its conduct described herein and the Valve
19 PMFN remains in effect, Valve continues to attempt to monopolize the global PC game
20 distribution market in violation of Section 2 of the Sherman Act.

COUNT THREE

Anticompetitive Course of Conduct in Violation of 15 U.S.C. § 1

23 416. Plaintiffs and Class Members repeat and incorporate each of the allegations
24 contained in the paragraphs above as if fully set forth herein.

25 417. As alleged above, through its contractual agreements with game publishers, Valve
26 has induced or coerced various publishers to enter into one or more contracts, combinations, or

1 conspiracies to unreasonably restrain trade, to control prices or exclude competition, and to
2 willfully acquire and maintain market power in the relevant markets.

3 418. Valve's conduct has had, and continues to have, substantial anticompetitive
4 effects in the relevant markets.

5 419. Valve's conduct has no legitimate business purpose or procompetitive effect.

6 420. There are less restrictive alternatives to the restraints that Valve has imposed.

7 421. Valve's conduct has had a substantial effect on interstate commerce.

8 422. Plaintiffs and all those in the Class have been or will be injured in their business
9 and property as a result of Valve's conduct.

10 423. Plaintiffs and all those in the Class have suffered and will suffer injury of the type
11 that the antitrust laws were intended to prevent. Plaintiffs have been and will be injured by the
12 harm to competition as a result of Valve's conduct.

13 424. Every day Valve continues with its conduct described herein and the Valve
14 PMFN remains in effect, Valve continues to unreasonably restrain the global PC game
15 distribution market in violation of Section 1 of the Sherman Act.

16 **COUNT FOUR**

17 **Violation of Washington Consumer Protection Act (RCW 19.86)**

18 425. Plaintiffs and Class Members repeat and incorporate each of the allegations
19 contained in the paragraphs above as if fully set forth herein.

20 426. Valve's conduct alleged herein, including its PMFN, exercise of its market power,
21 and anticompetitive use of Steam keys, constitutes unfair or deceptive acts or practices.

22 427. Valve's conduct alleged herein, including its PMFN, exercise of its market power,
23 and anticompetitive use of Steam keys, constitutes unfair methods of competition under
24 Washington State law provisions 19.86.020, 19.86.040, and 19.86.030.

25 428. As alleged herein, Valve's contracts, combinations, and/or conspiracies with
26 game publishers are anticompetitive restraints that have the purpose and effect of fixing and
27 inflating prices and reducing output in the relevant markets.

429. These contracts, combinations, and/or conspiracies are in restraint of trade.

430. As alleged herein, Valve has attempted to monopolize or has monopolized the worldwide PC game distribution market. This conduct affects the trade or commerce of Washington, including because Valve has its principal place of business in Washington and does business with publishers within Washington.

431. A marketplace without the restrictions imposed by the PMFN, SDA, and Steam Key Rules as interpreted and enforced by Valve and other limitations would force Valve to compete with rival stores on the terms they offer to publishers to distribute PC games, and in turn compete for consumers.

432. Valve's conduct causes publishers to pay a supracompetitive commission rate to Valve and deprives game purchasers of a competitive marketplace with more innovative offerings and potentially lower prices. Valve's conduct is accordingly against the public interest. The exclusion of rival storefronts harms gaming consumers by limiting their options of where to purchase PC games and keeping the retail prices they pay above the competitive level and/or keeping the quality and quantity of games available below the competitive level.

433. Plaintiffs were injured in their business and property by paying a supracompetitive revenue share to Valve for sales of its game on Steam.

434. Class Members were similarly harmed in their business or property as a direct result of Valve's unfair methods of competition. The conduct described herein caused Class Members to pay a suprarevenue share to Valve.

435. These injuries to Plaintiffs and members of the Class were and are a direct and proximate result of Valve's unfair and deceptive acts or practices.

436. As such, Class Members are entitled to damages and injunctive relief under Revised Code of Washington 19.86.090.

PRAYER FOR RELIEF

437. WHEREFORE, Plaintiffs Wolfire Games and Dark Catt, on behalf of themselves and those similarly situated, demands a trial by jury and respectfully requests:

- 1 a. That the Court determine that Plaintiffs' claim regarding the Class alleged herein is
2 suitable for class treatment and certify the proposed Class pursuant to Fed. R. Civ. P.
3 23(a), (b)(2), and (b)(3);
4 b. That the Court appoint Wolfire Games and Dark Catt as representatives of the Class;
5 c. That Plaintiffs' counsel be appointed as counsel for the Class;
6 d. That the Court adjudge and decree Valve's conduct to violate Sections 1 and 2 of the
7 Sherman Act, and the Washington Consumer Protection Act;
8 e. That the Court award, pursuant to 15 U.S.C. § 15 and the Washington Consumer
9 Protection Act, damages, including compensatory and trebled damages, to the Class
10 resulting from Valve's violations of the Sherman Act and Washington Consumer
11 Protection Act;
12 f. That the Court award, pursuant to 15 U.S.C. § 15 and the Washington Consumer
13 Protection Act, Wolfire's and Dark Catt's costs (including litigation, class notice,
14 deposition, expert, database, and other costs) and reasonable attorneys' fees resulting
15 from this suit;
16 g. That the Court order, pursuant to 15 U.S.C. § 26 and the Washington Consumer
17 Protection Act, permanent injunctive relief preventing Valve from continuing its
18 unlawful acts in violation of the Sherman Act and Washington Consumer Protection
19 Act;
20 h. That Wolfire, Dark Catt, and the Class be awarded pre-judgment and post-judgment
21 interest as allowed by law on all sums awarded;
22 i. That the Court adjudge and declare that Valve's conduct violates the laws set forth
23 herein; and
24 j. That the Court award such other and further relief as the Court may deem equitable,
25 just and proper, or the law may allow.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Dark Catt and Wolfire demand a trial by jury of all issues properly triable to a jury in this case.

Dated: August 26, 2022

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